In the Supreme Court of the United States

OCTOBER TERM, 1923

ORIGINAL NO. 3.

STATE OF NEW MEXICO, COMPLAINANT,

VS.

STATE OF TEXAS, DEFENDANT.

RESPONSE OF THE STATE OF TEXAS, DEFENDANT, TO THE APPLICATION OF STATE OF NEW MEXICO, COMPLAINANT, TO BE ALLOWED TO TAKE ADDITIONAL TESTIMONY AND FILE SAME HEREIN, BEING THE AFFIDAVIT AND MAP OF R. J. OWEN.

Now comes the defendant, the State of Texas, and in response to application of complainant, the State of New Mexico, to be allowed to take the testimony of R. J. Owen in the form of an affidavit attached to said application and a map thereto appended and in this respect says:

I.

Defendant, the State of Texas, objects to the granting of said application to take the testimony of said witness and any and all other applications to take additional testimony herein for the following reasons:

(a) Because in the above entitled and numbered cause opportunity was offered during the period from November 10, 1913, to November 28, 1918, to both parties herein to take testimony and evidence supporting the contentions made in the pleadings.

(b) Because on November 28, 1918, final certificate was made by the examiners appointed herein finally closing the taking of evidence and testimony in this cause and the record completed and certified to the clerk of this court.

(c) Because the determination of the litigation should not be

indefinitely postponed upon the application of the parties for permission to take additional testimony from time to time thereby unduly prolonging the litigation.

(d) Because the additional evidence and testimony offered by the witness R. J. Owen who was a witness for the State of Texas upon the trial of the case, if permitted to be filed and considered part of the record herein will become such and the defendant, the State of Texas, would thereby be prohibited from cross examining said witness for the purpose of ascertaining the truth and correctness of the testimony offered.

(e) Because the State of New Mexico, complainant, and the State of Texas, defendant, have filed their briefs herein based upon the evidence heretofore adduced and to permit the filing of additional testimony will hinder the State of Texas in making its defense and cause unnecessary and burdensome labor and the preparation of additional briefs.

(f) Because the purpose of filing such additional evidence and testimony results in permitting and allowing L. M. Crawford, private individual, to in effect intervene in this case between sovereign States in violation of the Eleventh Amendment to the Federal Constitution.

Wherefore, the defendant, the State of Texas, objects to the filing of said application and the introduction of said testimony or any additional testimony, and respectfully prays that the court set the cause for submission in order that a determination thereof may be had as soon as the business of the court will permit.

STATE OF TEXAS:

W. A. KEELING,
Attorney General of Texas.

JNO. C. WALL,
WALACE HAWKINS,
Assistant Attorneys General.

W. W. TURNEY,
Special Counsel.

Solicitors for Defendant, State of Texas.

ADDITIONAL TESTIMONY.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

(No. 3, Original.)

STATE OF NEW MEXICO, COMPLAINANT,

vs.

STATE OF TEXAS

IN EQUITY

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 18, 1924

[fol. i] IN THE

SUPREME COURT OF THE UNITED STATES

Original, No. 6

THE STATE OF NEW MEXICO

vs.

THE STATE OF TEXAS

MOTION TO CORRECT TESTIMONY AND TO TAKE ADDITIONAL TESTIMONY

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the State of New Mexico, by its attorneys, and files this its motion to be allowed to introduce certain additional testimony to correct and supplement the testimony of R. J. Owen, who testified upon the original hearing of this case as a witness for the State of Texas, and as grounds for this Motion the State of New Mexico respectfully represents to this Honorable Court:

First. R. J. Owen was duly sworn as a witness in this cause and testified as such witness on behalf of the State of Texas, his testimony beginning on page 2625 of Volume 5 of the transcript of the record in this cause, and there was introduced in evidence at the original hearing in this cause Defendant's Exhibit No. 65 as same appears in Volume 6 of the transcript of the record, and being Map [fol. ii] No. 3 of R. J. Owen. Said map shows among other things the line of a river which is designated "Rio Grande of 1905," and this river line, according to the map, apparently extends from the 32nd parallel down to the southern extremity of the land involved in this dispute, and the map apparently shows one continuous line for this river of 1905. However, the said witness R. J. Owen, in his testimony as set out on pages 2628, 2652, 2654, 2655, 2671 and 2680 of the printed record, testified that he actually surveyed the "River of 1905" from a point directly west of the southwest corner of the Canutillo Grant extending north to the 32nd parallel; and he also testifies that he actually surveyed the "River of 1905" below Piedras Paradas, but his testimony does not show that he actually surveyed the line of the "River of 1905" between the south boundary line of the Canutillo Grant, extended, and Piedras Paradas, and he further testifies that he does not claim that the line shown on the map between the south line of the Canutillo Grant and Piedras Paradas shows the location of the "River of 1905." The evidence, therefore, shows that the map prepared by R. J. Owen and known as "Defendant's Exhibit No. 65" does not show the location of the River of 1905 between the two points above mentioned.

The said R. J. Owen has, however, prepared a map which does show the true location of the River of 1905, and also the Rivers of 1908 and 1909, between the south boundary line of the Canutillo Grant and Piedras Paradas. A copy of this map is attached to this motion and marked "Supplementary Map of R. J. Owen" and we have also attached to this motion the affidavit of the said R. J. Owen, which is marked "Supplementary Testimony of R. J. Owen." This [fol. iii] map and this supplementary testimony of R. J. Owen shows that the true location of the Rio Grande in 1905 and in 1909 is shown on said map, copy of which accompanies this motion, and said supplementary testimony of R. J. Owen shows that the river line as shown on "Defendant's Exhibit No. 65" between the south boundary line of the Canutillo Grant and Piedras Paradas, is not a correct representation of the river line as it existed in 1905 and in 1908.

Your petitioner respectfully prays that it be allowed to introduce as a part of the evidence and as a part of the testimony in this case the map prepared by R. J. Owen, a copy of which is hereto attached, and also requests that it be allowed to introduce the testimony of R. J. Owen as detailed in the affidavit of the said Owen attached to this Motion, so that "Defendant's Exhibit No. 65" heretofore introduced in this cause may be supplemented, explained and corrected to conform with the actual conditions upon the ground and the actual facts, and so that this Honorable Court may in passing upon this cause be fully advised as to the actual conditions insofar as they may be affected by the testimony sought to be introduced by this motion.

Respectfully submitted, Frank W. Clancy, Attorney for the State of New Mexico.

[fol. iv] IN SUPREME COURT OF UNITED STATES

AFFIDAVIT OF R. J. OWEN

THE STATE OF TEXAS,
County of El Paso:

I, R. J. Owen, being duly sworn, state upon oath that I am the same R. J. Owen, known as Richard J. Owen, who testified as a witness on behalf of the State of Texas in the taking of the testimony in the case of the State of New Mexico against the State of Texas, now pending in the Supreme Court of the United States, and I am the same Richard J. Owen who, as shown on page 2625 of the Transcript of the Record in said cause, took the witness stand in said cause on or about the 12th day of December, 1914, and I am the same R. J. Owen who prepared Texas Map Number 3, which was introduced in evidence in said cause and which is marked "Defendants' Exhibit No. 65," and I state upon oath that, as shown by the testimony given by me in said cause, particularly on pages 2628, 2652 and 2654, 2671 and 2680. I testified in said cause with reference to the position of the Rio Grande River in 1905, and I

testified that the River line denoting said river of 1905, as shown on said map, was in accordance with my survey made on the ground beginning at a point directly West of the South line of the Canutillo Grant and extending Northerly to the thirty-second parallel of latitude. And I also testified in said cause, that I surveyed the river of 1905 and showed the said line on said map correctly, beginning at the point marked "Piedras Paradas and extending down to the South end of said map, but I also testified that I did not claim that the river line against the foot-hills, which is shown on said map between the South line of the Canutillo Grant and Piedras Parades was the line of the river in 1905, and I now state, under oath, that said parallel lines bordering the foot-hills and [fol. v] which appear on the map to be a continuation of the 1905 river do not correctly show the position of the river in 1905 and thereafter, as between the South line of the Canutillo Grant and Piedras Paradas, and I further state that there were indications on the ground of old river beds along near the line of the foot-hills on the West side of the Valley, but from the appearance of said old river beds it was and is impossible to state whether or not the main channel of the river ever flowed over near the foot-hills, and it would be impossible to state whether the depressions now on the ground and which were on the ground when I first became familiar with this territory, were made by the main channel of the river, or whether such depressions were made by high water in flood time, or whether they were made by water flowing down from the foot-hills from rains, and it is impossible to state what caused said depressions, and between Piedras Paradas and the South line of the Canutillo Grant said depressions have never been as well defined, or as regular, or as continuous, as they are to the North of the South line of the Canutillo Grant.

And I further state, upon oath, that I was familiar in 1905 with the location of the Rio Grande, between the South line of the Canutillo Grant and Piedras Paradas, and was familiar with the line occupied by the river in 1905 at the time of trial of the boundary suit between Texas and New Mexico, and am still familir with the position occupied by said river in 1905, and I have prepared a map which is attached hereto, and which is signed by me, or rather the blue print of said map is attached hereto, and said blue print, which is attached hereto, correctly shows the position occupied by [fol. vi] the Rio Grande river in 1905, and the river line of 1905 is on said map named, and is further distinguished by the shadings as shown on said map.

I further state, upon oath, that about 1905 the Rio Grande River, by an avulsive change, changed its location from the line marked "Rio Grande 1905" to a position such as shown on Defendants' "Ex. #65," with the exception that up until about 1909 the river continued to run around the channel occupied in 1905, beginning at about the intersection of the West line of Survey No. 156 with said river channel and continuing on around to the East of the Country Club property and continuing on around back across what is marked "Survey No. 156" and what is marked as "Survey No. 157" to the

channel now occupied by the Rio Grande River as shown on said map, and subsequently, between 1909 and 1911, or at approximately that date, by an avulsive change, the river left its channel which passed to the East and South of the Country Club building and went over and occupied a position approximately such as is shown on the map as the present channel of the Rio Grande river, and the position of the Rio Grande in 1905 and the position of the river around the Country Club in 1909 is indicated on the map as the river line of 1905, and on the ground said former channel may be plainly seen at this time for practically the entire extent of the course of said river of 1905, except where land has been graded, leveled and placed in cultivation, and even in those places the position of the River of 1905 may be distinguished on the ground for practically the whole distance. On the map the line of the River of 1905 is clearly indicated by distinctive shadings of the lines and by words designating said river line.

[fol. vii] I further state, on oath, that said map shows certain Texas surveys as extending across the line of the River of 1905. Said lines are not placed upon said map as true indications of the positions that said surveys should occupy, but are placed upon said map to show where the Texas claimants are claiming that said Texas surveys extend; and I am familiar with the field notes of said Texas surveys and know that there is not sufficient land in the valley to include said Texas surveys between the west boundary of the valley and the Canutillo Grant lines.

And I further state, on oath, that between the South boundary line of the Canutillo Grant and Piedras Paradas, there are no indications on the ground at the present time of any river channel along the line indicated on the map as the River of 1852, being the position claimed for that river by the State of Texas; and there are no old channels or depressions along the line indicated as the River of 1852 as claimed by Texas, the indications on the ground being that the river, if in 1852 it occupied the position claimed by Texas, then it changed its position to the position occupied by it in 1905, within the territory above indicated, by gradual changes through accretion, and not by an avulsive change, and that in said territory between the south line of the Canutillo Grant and Piedras Paradas the only avulsive changes which I am able to testify to are the changes which occur-ed subsequent to 1905, as indicated above.

From my observations on the ground during the period beginning at about 1900 and extending down to date, it is my opinion that if the river occupied in 1852 the position claimed by Texas, as [fol. viii] shown on the map, then it changed its position to the position which it occupied in 1905 by accretion and not by avulsion.

I further state upon oath that from the point where the shaded line showing the River of 1905 comes to an end at a point where it returns to the Rio Grande of the present date, and being the southern extremity of the shaded line, down to Piedras Paradas, there is no indication of an avulsive change, but the river has at all times apparently continued to run in approximately the same

position as it now occupies, and if it occupied the position in 1852 as claimed by Texas, and as shown on said map, then its present location has been reached apparently by accretion, and said map shows the position which the river occupied in 1852 as claimed by Texas, and also shows the position occupied by the Rio Grande in 1923, and on said map the line which is designated "Rio Grande in 1852" represents the line of the river in 1852, as such line is claimed by Texas and by its engineers in this suit.

Richard J. Owen.

Sworn to and subscribed, before me, this 26 day of November, 1923. Thornton Hardie, Notary Public in and for El Paso County, Texas. (Seal.)

[fol. ix] Jurat showing the foregoing was duly sworn to by Richard J. Owen omitted in printing.

[fol. x] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING MOTION TO TAKE ADDITIONAL TESTIMONY

On consideration of the motion of The State of New Mexico for leave to take additional testimony of the witness R. J. Owen in this cause,

It is now here ordered by this court that the said motion be, and the same is hereby, granted, to be limited to the subject matter detailed in his affidavits, dated November 26th, 1923, and filed with the motion, his examination and cross-examination to be completed within the month of May, with the right on the part of the State of Texas to introduce rebuttal to Owen's testimony during the month of June; New Mexico to pay all the costs of the additional testimony, both that of Owen and of witnesses called in rebuttal to his evidence.

April 14, 1924.

A true copy.

Test:

Wm. R. Stansbury, Clerk of the Supreme Court of the United States. (Seal of the Supreme Court of the United States.)

[fol. 1] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION RE ADDITIONAL TESTIMONY

Be it remembered that, pursuant to the Order of this Court, made and entered of record on April 14, 1924, fully set forth at page X of this transcript, for the re-opening of this case and the taking of further testimony herein,

There met, at the Civil Service Room of the United States Post-office Building, in El Paso, Texas, at 10:00 o'clock a. m., on Monday, May 5, 1924, pursuant to agreement:

Hon. Frank W. Clancy, Special Counsel employed by the State Boundary Commission of New Mexico;

Thornton Hardie, Esq., of El Paso, Texas, appearing by consent as Special Counsel for New Mexico.

Hon. W. A. Keeling, Attorney General for the State of Texas;

Hon. W. W. Turney, of Counsel for the State of Texas;

William E. Baker, Commissioner of this Court in the former proceedings had herein from the year 1913 to the year 1919;

And others.

Whereupon the folowing proceedings were had:

[fol. 2] [Title omitted]

It is hereby stipulated, by and between the parties to this suit, here represented by counsel, that the testimony to be taken under the order of the Court, made on the 14th day of April, 1924, shall be taken by Mr. W. E. Baker, one of the Referees originally designated to take the testimony in accordance with the order of the Court made in June, 1913, who is, at this time, by both parties, designated as Examiner to take the testimony of Mr. R. J. Owen, and other testimony provided for in the recent order of the Supreme Court.

Dated at El Paso, Texas, May 5th, 1924.

The State of New Mexico, Plaintiff, by Frank W. Clancy, Special Counsel, employed by the State Boundary Commission of New Mexico. The State of Texas, Defendant, by W. A. Keeling, Attorney General of the State of Texas, by W. W. Turney, of Counsel for the State of Texas.

[fol. 3] IN SUPREME COURT OF UNITED STATES

TESTIMONY OF RICHARD J. OWEN

RICHARD J. OWEN, called as a witness in behalf of the plaintiff, having been by the Referee first duly sworn according to law to testify to the truth, the whole truth, and nothing but the truth in the

cause now pending, upon his said oath testified in evidence as follows, to-wit:

Direct examination.

By Thornton Hardie, Esq.:

Q. 1. Mr. Owen, you are the same R. J. Owen who testified at a former hearing held in this case?

A. Yes, sir; I am.

Q. 2. You were one of the surveyors who prepared certain maps for the State of Texas, in this suit, which were introduced in evidence?

A. Yes, sir.

Q. 3. Are you familiar with a map which you prepared for use in this suit, being map No. 3 of R. J. Owen, known as "Exhibit No. 65, R. J. Owen?"

A. Yes, I am. I may need that map, to refresh my memory a little.

Q. 4. On the map which you prepared, and which is Exhibit No. 65, there are shown two parallel lines, which are designated in certain places as "Rio Grande of 1905," which extend from a point between the boundary line between Texas and New Mexico, on the 32nd Parallel, down to a point south of the Piedras Paradas, and south of Frontera. Now, that line which you have shown on this map,—what is that supposed to be? What does that designate?

A. That line shows a survey that I made, of the old river bed, prior to the time of the avulsive change of 1905, in the month of May, I believe—from the 32nd parallel to the southwest corner of the Canutillo Land Grant—a Texas Grant; this distance having actually been surveyed. There was an actual survey made of the river line of 1905, from Piedras Paradas, extending to the vicinity of what is known is the Courchesne Bridge. The field notes of this [fol. 4] latter end—this southern end—being taken from the subdivision of the New Mexico fractional township—I do not remember the range and township of that, now—but it lies in the vicinity of the El Paso Brick Company's plant—beginning on the north at Piedras Paradas. In the intervening space, between the southeast corner of the Canutillo Grant and Piedras Paradas, the line was shown on defendant's exhibit No. 65, following an old depression next to the New Mexico foothills. As to that part of this line, there was no survey of the line, but it was simply thrown in, around the New Mexico foothills, where the old depression is found—I having surveyed the limits of the toe of the foothills on the west side of the valley, from the Courchesne Bridge to the 32nd parallel of north latitude, during the time that I was engaged in the survey, over the period as shown in the former testimony.

Q. 5. Now, you speak of the depression around near the foothills: At the time that you first began surveying up there, could you tell, from what you saw on the ground, what had made that depression up there?

A. What portion of that land do you refer to now?

Q. 6. I am speaking, now, of south of the Canutillo Grant line, and north of Piedras Paradas.

A. Now, that would be very hard to answer,—as to the actual cause of that old depression. That old depression was practically continuous. There were very few places that it was not visible, in those days. From washes from the foothills, I would judge that that old depression was formed; and by overflow from the river during high water. It was used, so to speak, as a spill, to carry off the extra water. The washes from the arroyos on the west side evidently [fol. 5] brought in a great deal of water, and may have had something to do with the making of the depression. But I do not know, now, and I never did attempt to emphasize that that was a river bed of any particular time.

Q. 7. Could you tell, at that time, or at any time subsequent to that, whether it was ever the actual main channel of the Rio Grande?

A. No, I do not believe that it was, during my experience, the main channel, although this old channel was very well formed and defined, in former years. At the present time, it has disappeared in a good many places, from washes from the hills and other causes.

Q. 8. Now, did you prepare any map, to show the location of that depression?

A. Yes, it is shown in one of my maps, used in the former hearing of this case.

Q. 9. You mean this Exhibit No. 65?

A. Yes. That map there (indicating) I believe that that is the number of it. Exhibit No. 65.

Q. 10. But at the time, did you make any actual survey, to show the actual location of these lines.—of this depression?

A. No. I testified to that, however, in my former testimony.

Q. 11. Now, have you subsequently made a survey to show the position of the river in 1905?

A. Yes, I have made surveys to show where the river was in 1905.

Q. 12. Between what points? Between the southwest corner of the Canutillo Grant, and——

A. Between the southwest corner of the Canutillo Grant and the line across the river at the Country Club Bridge,—extending around the neighborhood of the present Country Club grounds, and turning [fol. 6] to the west and intersecting the present river.

Q. 13. I will ask you if these two sections of this map, taken together, show the position occupied by the river of 1905, within the territory just mentioned (showing the witness a map)?

A. Yes, these two sections of this map show the river of 1905 in the district spoken of.

(The map identified by the witness is marked by the Referee, for identification, as No. 280.)

Q. 14. Now, Mr. Owen, how is that river of 1905, the line of it, designated on this map? By any shading?

A. In the prints the shading usually disappears. It is evidently made with heavier ink. That line, on this map, appears larger and

whiter than the other lines. I refer to the line on this map called "Rio Grande of 1905."

Q. 15. Now, will you state where the river was actually flowing, along such line, in 1905, and up to 1905?

A. It was running as shown.

Q. 16. From the southwest corner of the Canutillo Grant down to what point?

A. Down to where it passes around the Country Club grounds, and intersects the present river.

Q. 17. Now, from the southwest corner of the Canutillo Grant, then, around there to the point No. 32 on that same river line, on the present river, it was running, in 1905, was it?

A. Yes, sir.

Q. 18. How long have you been familiar with the river, as running in that location?

A. Since 1900. Well, I should say since January, 1901.

Q. 19. Now, when did the river cease to run around in that course?

A. After the year 1905.

Q. 20. Now, what did the river do, in 1905, with reference to this [fol. 7] entire course that we have been speaking of?

A. Why, it left its old channel, away above Anthony, and shifted over to a point about a half a mile west of Anthony; and came in a southeasterly course and direction, toward the railroad, near Vinton; and continued on down, not very far from the Santa Fe Railroad, in its present position, down to a certain point.

Q. 21. Did it leave its entire course in 1905?

A. It left its main course, in 1905. I am speaking, now, of the main channel. It left its main course, up to a point a little north and west of the Country Club buildings, where it took up the same old 1905 river, and followed it all around to its intersection with the present river.

Q. 22. Where did it go, with reference to the numbers on this "1905 River," as shown on this map—the course numbers?

A. It came into this old channel at about the station No. 47, as shown on this map.

Q. 23. Then did it continue to run in the channel of 1905, to where that channel comes back to the present river?

A. Yes, sir. Of course, you understand that at that time, and in times of high water, the river would cut to first one side and then to the other, and would naturally shift somewhat. But the main channel of it was practically as seen here up until it made another change, after 1909, in the same vicinity.

Q. 24. Now, do you know when the river made that change?

A. Some time after 1909. After 1909, I might say. I am unable to state exactly.

Q. 25. What did the river do, after 1909, through that location?

A. You mean, did it change again?

Q. 26. Yes, sir.

A. Yes, sir; it cut through, at a point a little south and west of the Station of Vinton, and took almost a straight tangent to the Santa Teresa Hill, where it is now found. At the present time, there are

changes in the banks, on both sides, in places, from what it was when it first came there. But the main channel, after this second change that I speak of, is practically the same now as it was at that time.

Q. 27. Now, this wide line here on this map, marked "Rio Grande," what does that represent? This line through the L. M. Crawford Land (indicating on map marked for identification No. 280)?

A. That is the Rio Grande of the present time. The river of the peresent time.

Q. 28. Then, as I understand you, at approximately 1909, or about that time, the river changed from going around the Country Club buildings, in the course shown in 1905, to the position shown on here as "Rio Grande?"

A. Yes.

Q. 29. Well, was that all a sudden change, or gradual change?

A. It was all an avulsive change. I am not positive when that was, but it was sometine after 1909.

Q. 30. Now, when did you first see any surveying made, of the river, around to the east of the Country Club?

A. I saw them making a survey up there, in the early part of 1903. Some United States Deputies were surveying what was known as the Santa Teresa Grant.

Q. 31. Now, were you up here, when the Santa Teresa Grant was surveyed out?

[fol. 9] A. Well, I was up there, once, and saw them there at work.

Q. 32. When was that, Mr. Owen?

A. That was in the early part of 1903.

Q. 33. Now, was the Rio Grande at that time running along the river bed of 1905—the 1905 River as shown on this map (indicating No. 280)—in the position as shown here—as far as the territory around the Country Club is concerned?

A. Approximately so, yes. Except, as I say, the cutting of the banks first on one side and then on the other; the cutting on one side and filling on the other.

Q. 34. After its change from the location of 1905, did it leave its old location well defined?

A. Yes, sir; it was pretty clearly defined.

Q. 35. How well defined was it?

A. Well, that is hard to say; but in many places it is clearly defined yet.

Q. 36. In the vicinity around the Country Club, is the old river bed still clearly defined there?

A. Well, it is not so clearly defined, now. The old river bed has been graded down and leveled off, for the Country Club grounds. And it is probably a foot and a half lower, or two feet lower, than the surrounding country, there, now.

Q. 37. Does that map that you have here, truly show the position occupied by the river, in 1905, between the south line of the Canutillo Grant and Piedras Paradas?

A. Below where there is a turn in the present Rio Grande, after it leaves Santa Teresa Bluff, I would not state positively about that.

Q. 38. Well, how about from this point "36" on the Rio Grande,

on the dividing line between the Z. T. White Survey and White and McNary, as shown on this map, and continuing back to the southwest [fol. 10] corner of the Canutillo Grant, as shown on this map? Is that river correctly shown on this map?

A. Yes. Now, I would like to make a statement,—that after this avulsive change in 1905, probably for the greater portion of a year, or more, the whole valley was inundated in many places, and, as a consequence, the valley level was filled up and built up, in some places to such an extent that even only the tops of fence posts were left sticking out; and in some places the top wires of the fences were lying out on the ground; and some places the posts had disappeared entirely. And the water of the river stood all over the valley in some places. At White's Spur, Mr. White had to build up considerable dykes, to keep it out of improvements that he had there. It was pretty hard to tell, at that time just what the position of the main channel of the river was. But when it receded, and settled, we would find it, in certain positions. In parts of the country, after the settling and receding of the water, there were numerous channels left. In two places that I have in mind, there were channels left that are still visible. Those two places lie to the north of the Country Club grounds, extending in an easterly, and north, northwesterly direction, and passing on around to a point about where this sudden change was made after the early part of the year 1909. Now, there is also another old channel; and I do not know just when it was formed, nor how, which you will see today; and you can tell it especially from the character of the soil; which lies to the north of the Country Club road,—evidently having crossed the present river, at the Country Club bridge, and extending in an easterly direction; it finally disappears. Now, as to when and how these old channels were formed, I am unable to state.

[fol. 11] Q. 38. Now, that flood that covered the valley, and brought down silt, that you spoke of—did that destroy the channel of the river of 1905, as it then stood?

A. Well, in many places the channel is yet to be seen by the eye—by the depressions and the banks.

Q. 39. You say that that is true in many places?

A. Yes, sir.

Q. 40. Can you, on the ground, find at the present time, and follow, that old river channel of 1905, with any degree of accuracy?

A. Well, yes, I could, because I have been in there so much, and I know where it was—even the places that have been graded. The soil will show it. And there are some of corners that were set there, still there. And in other places it is no trouble to follow it at all.

Q. 41. Now, on this map (indicating No. 280) have you shown the position which the State of Texas claims that the river of 1852 occupied—at the time of the Salazar survey?

A. Yes, the 1852 survey is shown where I believe it to be.

Q. 42. Now, that is the position shown here on this map as the "Rio Grande of 1852?" That is the position claimed by Texas for that river, is it?

A. That is the survey as shown by the field notes of the Emory-Salazar Survey.

Hon. Frank W. Clancy: That survey was claimed to have been made by a man by the name of Diaz.

Witness: We referred to that as the Salazar-Emory Survey.

Hon. Frank W. Clancy: But as to the actual work, I think it was made clear, in the former hearings, that it was done by Diaz, and that we referred to it, all through the previous record in this case, as the Diaz Survey.

Q. 44. Well, do we understand that the river shown here on this [fol. 12] as "River of 1852," is the same river that is shown on your map, Exhibit No. 65, heretofore filed in this case?

A. Yes, sir.

Q. 45. Now, between the Canutillo Grant and the place where the present river goes back up against the foothills, north of the Santa Teresa Hill, do you see any evidences on the ground, at this time, of a river having occupied the line shown here on this map as the "River of 1852?"

A. No. No, you do not see any evidences of it.

Q. 46. Are there any defined banks, along that river, shown here on this map, as the "River of 1852?"

A. No. Not at the present time.

Q. 47. Did you ever see any banks there—in this particular territory that I have referred to?

A. No. If they had been there, they were covered up. Not in this vicinity you mention. I have, in other places.

Q. 48. You have seen them to the north of the south line of the Canutillo Grant?

A. I have, to the north of the north line of the Canutillo Grant.

Q. 49. Then, from your investigation on the ground, within the territory south of the Canutillo Grant, and north of Piedras Paradas, was there anything on the ground to show the location of the river of 1852?

A. There was, near what we called "Station 26" of the Salazar field notes. And the Diaz field notes. By actual survey. And it was called "Station R X I," a triangulation point of Diaz. A low district, which probably extended from southeast to northwest, approximately along the Salazar line, where the water stood, and overflowed, in a heavy run of water, which one might consider as the [fol. 13] depression of 1852. It is not absolutely clear to my mind, whether it is or is not; and whether it was or was not made by the river of 1852.

Q. 50. Where would that be, on this map, Mr. Owen? Do those stations show on here?

A. That would be at the point where the Country Club road bends to the west, on the west side of the bridge, and passes further to the west, and intersects the present drain ditch; and then extending up this drain ditch for several hundred feet. At the time that I worked in there, during those years that I worked on this case, before, we were in water shoe-top deep, and sometimes deeper.

Q. 51. That is from Station 25 to Station 26, of your Salazar survey?

A. I would not state exactly the distance, but it probably covered the distance between Stations 25 and 26, in a northwest direction, for several hundred feet—possibly for a thousand feet. There were no banks there, but just a little low swale in there, that continued for that distance. I took it to be the depression formed at that time. I do not say that it was, but I think it was.

Q. 52. Now, was there any other depression along there in that territory?

A. There is no other place around there, that I saw, that I would consider a depression that might have been made by the river of 1852; from the north line of the Canutillo Grant to the 32nd Parallel, with exceptions in places, the 1852 river line was very clear; and the banks were there, in the vicinity of what is now known as the Gilroy and Cervatious Ranch, that lies about three miles southwest of Anthony.

[fol. 14] Q. 53. Now, this depression between stations 25 and 26—was there anything about that that you could see, that would indicate whether it was washed, or made in recent years, or whether it was a depression made by the river of 1852?

A. No. I have answered that. I could not be positive as to what caused that.

Q. 54. Now, the survey lines that you show on here—Texas surveys 157 and 259—they were taken from the map, your map, exhibit No 65, were they not?

A. Yes. They show that on there.

Q. 55. And they represent the lines of the lands claimed by the Texas claimants, for those survey lines?

A. Yes. As to that part of the testimony, in regard to the Texas survey lines in that vicinity—why, I have covered that thoroughly, as far as I could, in the first testimony that I gave in the former hearing, which I think was in the year 1914. I think that was the first hearing. I could not add anything to that, and I would not care to attempt to testify to that, any further. That is covered by my former testimony, I am sure.

Q. 56. And the information that you show on this map here (indicating No. 280) is made not only from your information that you testified about at that time, but from more recent surveys.

A. Yes. You mean the Texas line, as shown on the map? Yes.

Q. 57. The back line that we have here—the West lines on this Crawford survey, showing the western line of the L. M. Crawford lands—what do those lines follow, to a large extent?

A. They follow the position between the foothills and the banks—the marginal lines where the valley strikes the foothills, approximately. In some places, they run over the points of the hills. And, some places they follow, as near as possible the toe of the hills.

[fol. 15] Mr. Hardie: We now offer this map in evidence.

Mr. W. W. Turney: We reserve the right, as has been agreed upon in this case, to move to strike out the map, and to state our objections later on, if we desire to do so, by reason of any development in the proceedings that might occur.

The map referred to was marked "Plaintiff's Exhibit No. 280;" and, as it is quite large, it is not bound with this transcript, but is transmitted separately; and, for convenience, a photographic copy of the map is attached to this transcript, as page 106 hereof.

Mr. Hardie: I would like to ask a few more questions:

Q. 58. Mr. Owen, this map that you have here, is correctly prepared, so far as showing the river of 1905, in the district in question, is it?

A. Yes, sir.

Q. 59. And it is correctly prepared, insofar as it shows the river of 1852, as claimed by Texas, in this case?

A. Yes, sir.

Mr. Hardie: The only thing is, if there is any objection about that part of the business, why it would look like you might make it now.

Mr. W. W. Turney: It may develop, on cross-examination, that there may be something; but you can re-qualify him at any time.

Mr. Clancy: I do not anticipate that any objections are going to be barred out.

Q. 60. Mr. Owen, from your examinations, on the ground, in past years, and your present surveys up there, are you able to state whether or not the river changed, from its position in 1852, as shown on this map, by avulsion or accretion?

Mr. W. W. Turney: Do not answer yet. We want to make this [fol. 16] objection to that question, and any answer to it. That it has not been shown, as yet, that the river claimed to be the river of 1905, at the point indicated, and adjacent to the country club district, actually came from the river of 1852, or the location of the river of 1852, either by avulsion, or accretion; and, second, the witness has not qualified as an expert on the question of avulsion or accretion. It is plain that the witness did not see the changes in the river, from his testimony now given, and that heretofore given; and, to ask the witness to give an expert opinion as to the character of change, when he has not been qualified as an expert on these points, would not be proper; and we object to the testimony being given, and if given, we will move to strike it out; and we may make further objection to it.

Q. 61. Mr. Owen, you have been surveying in the Rio Grande Valley for how long?

A. Since 1900.

Q. 62. Since 1900. Have you observed the action of the Rio Grande, in making changes, as to whether it leaves any bank, when it makes a sudden change, and as to what it leaves when it makes a gradual change?

A. Oh, yes, I have observed such things as that.

Q. 63. Have you observed the general character of the soil in the valley?

A. I would say that, in a general way, I have.

Q. 64. Are there old river beds through the valley, and near the

[fol. 17] points we have been talking about, that have been there for many years?

A. Well, there are old river beds there that were there about the time I first commenced to work there, and since the receding of the waters, after the avulsive change of 1905; but as to how old they are, and when they were formed, I could not say.

Q. 65. Are you familiar with the channels which are generally accepted and shown on the maps as the river of 1827?

A. 1847, or 1827?

Q. 66. 1827.

A. Yes, I know that old depression.

Mr. Turney: There is no river of 1827, that I know about.

A. (continued). The old river, or old slough, or depression—some surveyors have called it a slough, and other surveyors called it the river of 1826. That was, in many places, plain to be seen, up until a few years ago. It has since been graded over and filled up. That old river or depression was all along there, some years ago, and some of it is there yet, though it has been filled in, in many places.

Q. 67. What about the old river of 1828, and that of 1840, below here (indicating, on map)?

A. There is an old river, up as far as, and southwest of Anthony, which was, presumably, there in 1848, when Charlie Howard surveyed in the county—the Rodriguez, and other tracts; and that is practically the same thing as the river of 1852.

Q. 68. Now, these old river beds that are left when the river [fol. 18] makes an avulsive change—do they still remain visible for a great period of time, ordinarily?

A. They generally remain visible until they are filled up from some cause—such as by high water overflowing into them and filling them up with sediment—yes. In places they remain visible for quite awhile.

Q. 69. Where the river makes a gradual change by accretion, does it leave two banks—one on each side of the river?

A. Sometimes. Not usually.

Q. 70. What does it usually do, when it changes by accretion?

A. Why, usually it does not leave a bank opposite the direction in which it is receding; but sometimes it does. It sometimes forms a lower sandbar, or lower level of land, and sometimes maybe a foot, and from that up to several feet, lower than the surrounding country, even where the change would be an accretive change. But generally there is no bank left, where the river receded from.

Q. 71. Now, are you in a position, from your knowledge concerning these matters, to state what your opinion is as to how the river changed from the river of 1852, if it ever occupied that position, to the river of 1905, as shown on your map?

A. In what vicinity?

Q. 72. Between the south line of the Canutillo Grant, down to where the river is shown to be back in its old position, on the map.

A. In what district?

Q. 73. In the Country Club District.

A. To an observer, starting on the present west bank of the Rio Grande, which is approximately the location of the river of 1852, in [fol. 19] that vicinity; and, in passing over the country, to the east, in the direction of the County Club property, and by viewing that with the eye—making an examination, in other words—there is nothing intervening in the way of old channels which might have been formed and left there by an avulsive change. There were very few old cottonwood trees, and I saw none in the territory in dispute. Most of the old trees—the cottonwood trees in this country—these trees, when they get old, the bark becomes deeply corrugated and the bark turns dark, as distinguished from the newer growth and newer bark, which is smoother. Now, I do not remember seeing an old tree there. So, I say, from an examination made in that way, it looks as though the old river may have eaten its way over there by erosion and accretion. And another thing, where the old river struck the foothills, further west, and was turned out with some force—I presume on account of the momentum—towards the east, it may have gone and reached over to the east side of the Country Club until it struck permanent soil, and it may have been formed in that way. But, so far as it being an accretive change, I believe I have answered as far as I could, because I have made no examination of the soil, and have had no tests made of the different soils, and I have nothing to form such conclusion from—no facts further than I have stated; and I do not think that I am absolutely qualified to state. That is about all I can state about that.

Q. 74. Now, if the river occupied the river location of 1852, as shown on this map, would its present position be a continuance of the bulge to the east? The river on this map is shown as coming [fol. 20] out from the foothills, and making a bulge out towards the Country Club. What have you to say about that?

A. You will notice that the river of 1852 struck the foothills above Piedras Paradas, only in one place, and that is the Santa Teresa Bluff. It struck there; and from there on it did not strike the bluffs on the New Mexico side, at all; but these old channels of 1852 and 1905 have, apparently, crossed the position of the present Rio Grande, approximately in the same place, which is in the vicinity of the Country Club bridge; and, before reaching the bridge, it was on an easterly course, coming down; and what caused the river of 1852 to go no further to the east, and to make the bend west of the Country Club grounds, is hard to say. It may have been the character of the soil, or something else; or the mechanical force may have died down, and it took the path of the least resistance. But it makes a change somewhat to the east, and in the direction of the Club grounds, at that point.

Q. 75. The river which you show as the River of 1905—is that generally recognized as being the river line of the river of 1905, among surveyors and people familiar with that territory at that time?

A. Why, I do not know that I could answer that question. I have seen plats made by the Reclamation men, and such as that; and, as

to the views of the old residents up in that country—they could answer that.

Q. 76. Have you ever seen the Reclamation map of 1903? I presume that you have seen many of these maps?

A. I presume so. I have seen many of these maps, yes.

Q. 77. Look at this map, which is the Reclamation Service map of [fol. 21] 1903, and see if that line shown there is the same river that you have. This dotted line there, near the foothills? (showing a map to the witness.)

A. Yes, sir. That shows the same thing as my survey there. It is practically the same thing—this dotted line.

Q. 78. The French survey of 1903?

A. Yes, that old river location is the same as I made the survey of, west of Anthony, and clear down as far as I surveyed it.

Q. 79. Now, where is the Canutillo Grant southwest corner? The southwest corner of the Canutillo Grant, approximately, on this map? Is it the southwest corner of No. 15?

A. It is near the southwest corner of Section 15.

Q. 80. And the township?

A. Township 27 South, Range 3 East, New Mexico Meridian.

Q. 81. Then, from that point down the river, south, to below the Country Club, is the river shown on this map as the river of 1903 practically the same as your old river?

A. Yes, sir; practically the same. I have seen this map before but I have never examined it.

Q. 82. Does this map show the approximate position of the present river, as it crossed the river of 1903 or 1905?

A. Yes, sir; it shows the approximate position. On this scale, however, it would not show all the bends—except the very pronounced ones.

Q. 83. And it shows, approximately, the foothills?

A. Yes, sir, the foothills' lines are very well shown.

Q. 84. And, down around Piedras Paradas, do you have practically the same bends as shown on this map?

A. Yes, at Piedras Paradas; where it strikes Piedras Paradas, it is about the same as shown here.

[fol. 22] Mr. Hardie: We offer this map. (Map handed to Mr. Turney.)

Mr. Turney: We would like to examine it, and enter objections, if any, later.

The map referred to was marked, by the referee, for identification, as No. 281, and is appended hereto.

Q. 85. Mr. Owen, let us look at plaintiff's exhibit No. 21 offered in the original hearing of this case, which appears to be a copy of a map made by J. A. French, in 1903, showing the Rio Grande of 1903; and I will ask you if that river, as shown on this map by J. A. French—plaintiff's exhibit No. 21—shows approximately the same position for the river of 1903 as your river of 1905, and the present

river, between the Southwest corner of the Canutillo Grant and Piedras Paradas?

A. Yes, it appears to be about the same thing.

Q. 86. And this bend is practically the same bend that you show, around the Country Club? This bend in the river which crosses a line running east and west, which is a short distance south of White's Spur?

A. That is the elevation line. It is proper to refer to it. It refers to the levels. It is shown here as 3,702 feet.

Q. 87. In that territory, is the river shown on this map of 1903 approximately the same position as the river you show for 1905?

A. I think so, yes.

Q. 88. Mr. Owen, you have been up in that country, recently, making a survey and dividing up certain land, have you not?

A. Yes, sir.

[fol. 23] Q. 89. Have you gone over the ground around along the foothills, in the valley, making a survey of a strip of land at least a hundred feet wide, which is to show the foothill line?

A. I have, yes.

Q. 90. Now, are there any indications there, now, of any old river bed, extending along the foothills there, except where the depression is for the 1905 river?

A. The 1905 river is shown clearly, out west of the Crawford property headquarters, right up next to the bluff. There is a distinct depression, extending from the present right bank of the Rio Grande, in the vicinity of the old Santa Teresa house, near the north end of the Santa Teresa Bluff, following in a northerly and northwesterly direction, for probably half a mile, along the foothill line, or very close to the foothill line; and which depression is now occupied by the Reclamation Drain ditch; and between the northerly end of this depression just described, up to the 1905 river which I have spoken of, as lying west of the Crawford headquarters, what old depressions I had formerly seen there have been filled, by washes and rains from the foothills. They have been covered. And even in 1909, where now covered, it was clear. Sometimes the old channel would carry water from the run-off from the foothills.

Q. 91. At the present time there is no evidence of the depression from that point where the present river is, up until you strike the 1905 channel, is there?

A. No, except where I have stated there. There is a depression extending from the south end of the Santa Teresa Bluff, and following closely approximately along the foothills, down to Piedras Paradas.

Q. 92. North of where the present river strikes the Santa Teresa [fol. 24] Bluff, coming north, with the exception of the part now occupied by the drainage ditch, there is no depression along the hills, until you come to the 1905 river, is there?

A. No, not at the present time.

Q. 93. After you leave the 1905 river, where it strikes the foothills, above Santa Teresa Hill, and extending from there to the

place where the 1905 river comes in towards the Canutillo Grant, there is no old depression there, is there?

A. Let me get that clearly, now.

Q. 94. Between the point where the south line of the Canutillo Grant, extended, strikes the foothills, and extending down to the point where the river of 1905 struck the connecting hill line survey of 6.74 acres, is there any indication on the ground, now, of any old river bed along the foothills?

A. No. On the contrary the sand is washed out there from those arroyos, 600 or 700 feet; and it has made a high ridge where this old river bed of my time used to be.

Q. 95. That is, opposite the foothills, and along the foothills?

A. Yes, sir.

Q. 96. And you can not see any old river bed along that location at this time?

A. No.

Q. 97. Now, the sand that you speak of has been gathering there from this hill land there, of course, ever since there were hill lands?

A. Yes, sir.

Q. 98. And you can see how far the sand has come over into the valley, from those hills, since there was a valley there, can you?

A. Well, I know how far it has come over, in my time, yes. It [fol. 25] has evidently been coming for a long time. Other places those bluffs are getting higher and higher, all the time, because the river is cutting on the New Mexico side at the bluffs.

Q. 99. Now, at Piedras Paradas, and the Santa Teresa Hills, has the river apparently been striking approximately the same place ever since 1852? The same as it struck there in 1852?

A. Apparently it has. I do not think that the 1852 river struck, actually, at either point; but we cannot tell about that, because the Santa Teresa Bluff is probably standing there some 20 or 25 feet high, and the Piedras Paradas Bluff is standing pretty high; and to carry these slopes out into the valley, in 1852, they probably extended much farther out than they do now.

Q. 100. But the river of 1852, as claimed by the State of Texas, was striking in approximately the same vicinity as the river now does, at Santa Teresa Bluff, and the Piedras Pradas Hill?

A. Yes, sir; approximately.

Q. 101. Now, your Texas survey—what did you show on your map, Exhibit No. 65? You arbitrarily stopped your survey lines as they came south, when they hit the foothills, did you not?

A. They stopped at the foothills.

Q. 102. And, if you had continued south for the full distance, called for in the survey, they would have gone out into the foothills?

A. Yes, sir. I testified on that. I can testify no further on that. I want to say that, in testifying in this case, now, I consider myself as an absolutely neutral character. That I am not testifying for either the plaintiff or the defendant. I am testifying here [fol. 26] according to the best of my ability, without any prejudice, and I can not go into the substance of what I testified to before.

Q. 103. You mean that your testimony as given before is not to be changed?

A. Yes, sir; it is not to be changed. This is a question brought up since the former hearing; and I consider that it is an entirely different phase of this boundary dispute, than anything that I have testified about, or work done before.

Mr. Hardie: I believe that is about all.

Mr. Clancy: I think it is just possible that I may want to ask a few questions, after we get the testimony as given here today. I think that Mr. Owen ought to have an opportunity to read his testimony over, because, in testimony of this character, by this class of witnesses, a man ought to have an opportunity to make corrections, if he desires, and to be sure that he is correctly and properly reported. I believe that time will be saved, in the long run, if we adjourn now, and give the referee an opportunity to write up the testimony that has been taken, and let us have it so that we may go over it, and that Mr. Owen may suggest any corrections that he desires, if there should be any.

Mr. Turney: I think that that would be a good idea to be carried out. And I suggest that we might as well meet at my office, tomorrow.

[fol. 27] Thereupon an adjournment was taken and the further hearing of the cause was continued until tomorrow morning, at 10:00 o'clock.

And, at 10:00 o'clock A. M., of Tuesday, May 6th, 1924, there were present, at the office of Honorable W. W. Turney, in El Paso, Texas, the same persons as on yesterday.

After discussion, it was decided, in order to afford the witness R. J. Owen an opportunity to read over the transcript of the testimony given by him on yesterday, a recess would be taken until 2:00 o'clock in the afternoon, which was accordingly done.

And at 2:00 o'clock in the afternoon of said day, pursuant to said recess, the parties met, and the examination of the said witness, R. J. Owen, was proceeded with, as follows:

Mr. Clancy: Mr. Turney, before you proceed with the cross examination of Mr. Owen, there are one or two questions that I want to ask, suggested by what was testified on yesterday:

Direct examination.

By Honorable Frank W. Clancy:

Q. 104. Mr. Owen, in your testimony given on yesterday, at one point at least, you referred to the triangulation point in the survey which we have called the Diaz or Salazar Survey. My recollection is that you testified, about that triangulation, that it was quite com-
[fol. 28] plete and perfect, as far as you have been able to examine it.

A. Yes, sir.

Q. 105. In your examination of that triangulation work, did you personally visit all the triangulation points or stations of that work?

A. Yes, sir; I placed all of the stations. Placed them all. I placed them all myself, both on the New Mexico foothills and in the valley.

Q. 106. Have you any recollection of finding, at one of those triangulation stations—apparently for the purpose of marking the point, a sawed timber, as some of the marking of the point?

A. A sawed timber?

Q. 107. Yes, a sawed timber—a 4x6 or a 2x4—I do not remember about the dimensions. Have you any recollection of that?

A. No, I did not place any such timber.

Q. 108. You have no recollection of it?

A. No, not of any sawed lumber, at all. I placed posts in all of those place with flags on them, 16 feet high*t*.

Q. 109. I have been told that, at at least one of those triangulation points there was found a sawed timber, 2x6 or 4x6, apparently placed there for the purpose of making the point. You have no recollection of that?

A. I have no recollection of that.

Q. 110. Then, I will not ask you further about it, since you have no recollection of it.

A. No. I put in all of those markings that were there, for the purpose of marking the points.

Mr. Clancy: Then I will not pursue the matter further. That is all that I want to ask Mr. Owen.

[fol. 29] Attorney General Keeling: Mr. Turney, will you examine the witness?

Cross-examination.

By Honorable W. W. Turney:

Q. 111. Mr. Owen, your examination on yesterday was conducted rather rapidly, and I was unable to keep up with it, or with all that was said, especially that part which referred to the plat, and was pointed out in the asking of Mr. Hardie's questions, and it may be necessary to be a little tedious, in going over these things about the river, again. Please state, again, when you first became acquainted with the district in the vicinity of what is now known as the Country Club?

A. The first acquaintance I had with that, was in 1901. I will state why I was at those points that I visited at that time. In the early part of 1901 I was doing some surveying in what is known as Survey 264, made for Tom Zimpelman. That survey was made on a date—I do not remember the exact date, or the month, but it was early in 1901—and the land is situated about 4,000 feet north of the Country Club grounds or property. Then, in 1902, I made surveys of——

Q. 112. Just a moment. Did you give the number of the survey that you made for Zimpelman?

A. Yes, sir. It was No. 264. And I gave its location. The second visit was in the early part of 1902, when I surveyed several

numbers, in order to get a proper survey of the Jett Surveys 154 and 155. In doing that, I had to make a survey of several numbers. That survey extended up to and included White's Spur Station, and [fol. 30] all of the buildings that were there at that time, and are even there now. The nearest point of that work was, approximately, 1,860 feet east of the present Country Club grounds.

I believe in the same year of 1902—but I am not positive whether it was 1902 or 1903, but I think it was 1902—I was there again for Zimpelman in the survey of No. 262, lying further to the west, and south of the Canutillo Grant line, which is probably some two miles north of the Country Club grounds.

In 1903, in the early part—I can not say now whether it was February or March—I was sent out, in company with Mr. Zach White, and visited Colonel Coleman, when he was making the survey of the Santa Teresa Grant. We had to cross the river, to get there, because they were working on the right bank of the river. We crossed the river at a point between the old club building and the new club building. We walked across the river on a fallen tree, that had fallen across the river at a particular place, where the river was very narrow. I remember that particularly, because I mighty near fell in the river. Now, that place that we crossed the river was probably 600 or 700 feet east of the present new Country Club building.

Now, the next time I visited that locality was between 1905 and 1908. I should say it was about 1906 or 1907. I surveyed for Ross Bryan and Max Moeller, and others, Survey No. 260.

In 1909, I spent two or three weeks up in that country—in the wilderness, it was then—surveying all the numbers lying to the west [fol. 31] of Survey 155, I think it was, and over to Survey No. 262, running those lines north and south on the sides, and running the north lines east and west, cutting through the brush all the way—every foot of the way.

I got pretty well over the country; and, in more recent years, I have walked over all of it, and surveyed all—every bit of it, for different ones, at different times, and for different purposes.

Q. 113. How thoroughly did you survey Survey 261?

A. 261. That was in 1909.

Q. 114. Have you the field notes of that survey?

A. No. They were burned up, in 1910.

Q. 115. Where was the river, with reference to the south end of that survey, when you surveyed it?

A. In 1909? You mean the present river?

Q. 116. The then river. Where was it, when you surveyed that Survey in 1909?

A. Why, that was considerably to the east. That was more than a mile—or about a mile, or something like that, to the east of where I was working on 261.

Q. 117. How long had it been to the east of 261, when you surveyed 261 in 1909?

A. It had been over there—the main channel had been over there since the flood and the avulsive change in 1905.

Q. 118. And no part of 261, in 1909, touched the river?

A. Not the then river—the main river.

Q. 119. You have marked, on the west part of the valley, on defendant's exhibit No. 65, through a good part of the distance, a river as "1905 river."

A. Yes, sir.

[fol. 32] Q. 120. And on this plat, that is a continuous river, on the west side of the valley, to a point towards Piedras Paradas—is that true?

A. It is a continuous river over there, yes.

Q. 121. A continuous line of the river?

A. Yes, sir.

Q. 122. Now, why the designation "1905 River?" What does it have reference to?

A. That has reference to the river where it was located up to the time it made the avulsive change, north of Anthony, with the exceptions which have already been stated in my testimony given in 1914 and 1915, and also during this present hearing at this time.

Q. 123. In other words, what do you mean by the designation "1905" along that river? Does that mean that it abandoned that channel in 1905? Is that correct?

A. That is the idea.

Q. 124. That is what you mean?

A. That is what I mean.

Q. 125. And when you say the "1914 River," you mean that that is the river that was in existence then, or abandoned its channel in 1914?

A. That is what I mean. That is what I would mean.

Q. 126. I will ask you, Mr. Owen, if, except as indicated now and yesterday, there is any intention on your part of amending any part of your former testimony?

A. There is no such intention, at all, and I do not expect to.

Q. 127. Whatever you said, before, regarding the issues in this case, was stated on your firm belief that all you stated was absolutely true?

[fol. 33] A. Yes, sir.

Q. 128. And it is just as true today as it was in 1914, when you did testify?

A. Yes, sir.

Q. 129. Prior to your testimony of 1914, how long had you been employed by the State of Texas, or those interested with the State of Texas, in the investigation of the matters at issue in this case?

A. Now, at home, I have the exact date, in my field books. But it was in the early part of the summer of 1912, or 1913, and I would not say which, that I began; but I have the exact date at home.

Q. 130. You were, then, employed for some months, or perhaps more than a year, in making investigations for the defendant, prior to your giving your testimony?

A. Yes, sir.

Q. 131. During that investigation did you make a traverse of the valley, especially in the ascertainment of the cause of the old river beds?

A. Yes, sir.

Q. 132. Beginning at what point, and ending at what point?

A. That work, for the purpose of locating the old or abandoned river beds, was not continuous. It was done at different times, and in different places, and all tied together, or tied to some common point. That work extended from a point some four or five miles west of the town of Anthony, and right upon the 32nd parallel, as produced west, and extended back over the upper part of the valley, and covered most of the well-pronounced old river beds that could be found in that district.

[fol. 34] Q. 133. And how far down below Anthony?

A. They were run down to the corner of the Canutillo Grant—the Southwest corner. Only one of them was run down that far. Only one extended that far. Some were due west of Canutillo town; some west of Vinton; and west of un-named points on the railroad; and many places over the valley.

Q. 134. And many channels?

A. Many channels, yes, sir. In places, old rivers had been thrown out from the New Mexico foothills, by washing that had come down to the old channels that were left; and these washes were left during the dry weather, and when the river came down again, why it would just take a short course and cut across the valley for a time, and would eat out these old washes from the hills, and probably wash them out, and sometimes perhaps not wash them at all.

Q. 135. Is it not true, from your years of experience and observation, that the changes in the river, in the district inquired about, were usually made during flood times?

A. Yes, usually made during flood times, or right after dry times, when the floods would come in and strike these structures that had gotten in there from the rain washes, and wash them out again. They were almost always caused from flood waters.

Q. 136. And those changes would go how far?

A. Oh, they would go—I have in mind one case where an old channel left the New Mexico foothills, considerably north of the little town of La Union, and cut a channel clear across the valley, almost to the present river, and shifted, then, to the south, and came out right near where Gillette's Dairy now is, and went into the old [fol. 35] river of 1886, and stayed there for awhile, and then must have gotten out in some way towards the New Mexico foothills, because there is where we found it in 1905, prior to the avulsive change.

Q. 137. During the earlier years, preceding the building of the Elephant Butte Dam—during the year 1912—is it not true that, during the months of April and May, that the river was usually in flood, occasioned by the melting of snows, joined with rainfall in New Mexico and Colorado?

A. Do you mean to confine it to one year, or to all years?

Q. 138. All years.

A. Yes, sir; that was the custom. That was the common thing.

Q. 139. And is it not true that it was a common occurrence to find the river channel greatly changed after the flood waters had receded?

A. Yes, sir.

Q. 139½. Beginning with the year 1901, which was the year that you began working up there, is that true?

A. Yes, sir.

Q. 140. Is it not true that in that year, and in the years after, there were a great many floods up there in the Rio Grande Valley?

A. Yes, sir.

Q. 141. So much so that, in the narrow or choked end of the valley, where this valley gets narrower, that there was water all over the entire valley, up here?

A. Up in this vicinity of the Country Club?

Q. 142. Yes.

A. Yes, sir, it is true.

Q. 143. You did not metion, awhile ago, indescribing the work that you did up there in the earlier years, that you surveyed or re-
[fol. 36] surveyed 157 and 156?

A. I surveyed everything running west of 155.

Q. 144. Yes, but you did not specifically mention these two.

A. I did not call all the numbers. I did not say that because I had formerly surveyed 154 and 155. Everything from Frontera, or the old lime kiln, which was in existence at that time, up to and including 155; and then, when I spoke of surveying further west, in 1909, I said that I had surveyed all the numbers, or practically all of them, lying west of 155, which would include 157 and 158—156 and 157.

Q. 145. Who originally surveyed 157?

A. Well, let me see. I think that was made in 1859.

Q. 146. Was that Tays?

A. I think Tays worked there in 1870. I think 157 was surveyed along in about 1859. Maybe it was re-surveyed.

Q. 147. It might have been re-surveyed in the seventies, by Tays?

A. Yes, sir. I think it was surveyed in 1859.

Q. 148. You have had occasion to study the surveys and re-surveys in this valley, many times?

A. Yes, sir; many times; and I cannot remember them all.

Q. 149. Neither of those surveys call for a crossing of the then existing river, do they?

A. No, I don't think so.

Q. 150. The survey of 156 does not call for a crossing of the river, does it?

A. No.

Q. 151. If you had surveyed it, or re-surveyed it, and had found an existing real river, you would have shown it, would you not? You would have mentioned it?

A. I certainly would have.

[fol. 37] Q. 152. Would you have mentioned the fact that you crossed the International Boundary line, or the only river that existed?

A. Well, if I believed that the survey crossed the river that I came to, I would certainly cross it and make note of it.

Q. 153. You have re-run the lines of 156 and 157, more than once, haven't you?

A. Yes, sir.

Q. 154. And surveyed them when they were partly in cultivation?

A. There has been no cultivation in 157, except in quite recent years. There has been some cultivation on 156, for some time.

Q. 155. Where was that?

A. That was east of the Country Club.

Q. 156. Between the buildings, and what you designate as a river?

A. No, there was not any on that side, until more recent years.

Q. 157. Was the cultivation on 156 just east of the Country Club buildings and your river?

A. It was on the east side of the river.

Q. 158. You haven't left much for cultivation.

A. Not in that particular place.

Q. 159. Was the cultivation west of the Country Club?

A. No—not until recently

Q. 160. How recently?

A. I don't think there has been any cultivation in there, farther back than five or six years. I had occasion to run a level for a ditch line, at the time that Mr. Longuemayer was about to put some of [fol. 38] that district into cultivation, and, I believe, intending to put into cultivation some land in 157.

Q. 161. Where?

A. Up on the northern side where the present Country Club road is.

Q. 162. Mr. Owen, who cleared the land around the Country Club, in Survey 156, and to the westward of the Country Club, in 157?

A. Who cleared it?

Q. 163. Yes.

A. The clearing in 156 was done by the Country Club people, because their property is in that—lies in that survey, to a great extent. And the clearing of 157, on the west of the Country Club buildings, was done through, or for, Mr. Zach White.

Q. 164. Do you know for what purpose?

Mr. Hardie: I think we will object to the clearing, for the reason that the question of who cleared the land, and why, is not material in this case.

A. It is my memory that the land in 157, west of the Country Club grounds, was cleared and graded by a tenant of Mr. White's, by the name of House.

Q. 165. And at about what time?

A. Well, that work has been done in the—within the last three or four or five years: Say, in the last four years. Mr. House was not living there, until about 1920 or 1921, I don't think. He was living up nearer to Montoya. I think he came down there in 1920 or 1921. Now, if I remember right, all that portion of 157 that we are talking about had been cleared, before that. It was, in small patches. [fol. 39] I do not think there was any of it cleared, farther back than four or five years ago.

Q. 166. Had you had occasion to go there, and along the common line between Surveys 156 and 157, in the earlier days?

A. 156 and 157. The first time I followed that line, was in 1909. I followed it as far as I could follow it.

Q. 167. Go on, and tell all about why, and which way you were going, and why you could not follow it.

A. Well, I will tell you what I did. My work began, at that time, in 1909, at a large stone, on the Santa Fe Right of Way, known as the northwest corner of Survey 134, and followed that line to the south; and erected a corner, for the northeast corner of 158. I put in a large cement post. I followed the north line of 155, to the west, and put in the northwest corner of 158. Then I followed the east line of 156, to the north, and put in the northeast corner of 156. I followed the north line at 156, to the west, trying to measure the distance of 1,867 feet. I established a point—a corner—on the left bank of the river, some few feet before getting to the corner point. The corner point was in the Rio Grande, at that time. Then, I followed to the South—tried to run to the south, but was intercepted by the river; but I went on, to the north, on an offset, and finally got back on the line of 157, and continued north to the northeast corner of 157. I then ran west, on the north line of 157, to the northwest corner of 157; and—I am not quite clear, now, as to whether I actually set that corner in its position that it should be—the proper distance—or near the bank; because the river was close by. I took up the line between 259 and 157, and run to the south; [fol. 40] and we crossed—I don't remember at what distance—a channel—a running channel, which was about a hundred feet wide. I think we stretched the tape across it. We continued, on that line, to the south; and, at a point further down, I ran into the Rio Grande; and having come around, then, to the east—around this point of the Rio Grande—I took up the line again, and run it on through to the south, and set the point at the full distance, according to the field notes. I did the same thing for a line between 157 and 156. As I continued on direct through, on that line, I crossed the Rio Grande twice; but I got a line through by going around and triangling back, to get the distance across. So I ran all the lines of 259, 260 and 261—the north and south lines. The south ends of those lines were in that old depression along the New Mexico foothills. On all of those lines, I crossed this old channel with water in it. It was not hard to cross. It was not deep. We selected our points to cross, and drove across with the wagon, with mules attached. I surveyed all those lines, and cut the brush out, all the way.

Q. 168. How many channels were there in existence at that time, at or near this point?

A. The only old channel, that was not a main channel of the river at that time, which was clearly defined and continuous, is the one that I mentioned, that we crossed so many times with the mules. There were many numerous smaller channels, extending from the northwest to the southeast, that we either had to wade across, or drive across, that the water was pretty deep in. There was water in all [fol. 41] those channels, at that time.

Q. 169. What time of year was that, Mr. Owen?

A. That was in the winter. I don't remember the month, just now. It was in the early part of 1909.

Q. 170. Is it not true that when you first saw that district, and especially surveys 156 and 157, that there was considerable fencing in and about where the new Country Club now is?

A. The new Country Club buildings?

Q. 171. Yes.

A. I remember running into some fencing, in going through the brush. I do not remember all the places. I do remember a fence, in going up the east line of 157. I remember a fence on the east line, and the south line, and the west line, of 264. There was also a small patch of ten or twelve acres, or something like that—maybe more—I do not remember the acreage, now—in, I believe, 260, that was fenced. The fences that may have been west of the Country Club buildings, or in that vicinity, I do not remember. But I know that I run into numerous fences, at different places. If I had my field notes, I could tell just where they were. But they were burned up, in this Calisher Building fire.

Q. 172. Can you tell, with reference to the Country Club, what part of 157 was fenced?

A. The northern half of that was fenced, on the east side. And there was a fence, also, on the bank of the river, opposite the Santa Teresa Bluff, extending down and following the river at that time, more or less, coming down to the bank of the Santa Teresa Bluff, and extending down the river, easterly, for quite a ways—probably away out in 155, nearly to the east line; and then it took a northerly course, back to the railroad. I remember that, distinctly.

[fol. 42] Q. 173. Is it not true, Mr. Owen, that where you have made the bend in the river, in circling the Country Club, that there was fencing there, in the early part of 1900?

A. In 157?

Q. 174. Yes, and in 156.

A. I do not remember.

Q. 175. A good many years have elapsed, since your first work up there, have there not?

A. Yes, sir.

Q. 176. And a great many years have passed since the beginning of the history of this case?

A. Yes, sir.

Q. 177. Things that you did in your first years were much fresher in your mind then than they are today?

A. Yes, sir; they are crowded by the happenings of other years. New facts coming into my mind, crowd those of the other years out.

Q. 178. You said that that old channel that you crossed was about 100 feet wide?

A. The old channel—yes, I remember going across that, a number of times, rather than to take the time, and to save the trouble of triangulation, working it out. We were carrying a heavy chain.

Q. 179. That was the channel that you indicated as being the river of 1905?

A. Yes. We could measure it across with a chain, anyway,—with a hundred-foot chain.

Q. 180. Now, Mr. Owen, in the original investigation, and the giving of your testimony, did you not testify that the channel's width, ordinarily from two to four hundred feet?

A. That was on the main river.

Q. 181. Yes sir.

[fol. 43] A. Generally speaking. Of course, at places—the sharp bends, where it curves in sharply—the river proper—the water, at normal, is quite narrow, where it comes in towards the sandbars, while out a few hundred feet away you often find it from three to four hundred feet. The average would run, I should say, about three hundred feet. Two hundred and fifty to three hundred feet—this river.

Q. 182. You could not say, Mr. Owen, could you, concerning the slough made by the high water?

A. Which one is that?

Q. 183. This depression that goes around by the Country Club.

A. The slough made by high water?

Q. 184. Yes, sir.

A. I could not answer it that way, because I am positive that in 1909 the main channel was running there. There is no question about that. The most of the water of the river was running there, then.

Q. 185. Where else was there a running stream?

A. Well, this old channel which I have crossed so many times, which I have shown as the 1905 River. It was carrying water; had been carrying water from up above, I presume from waste—desagua water (waste ditch water).

Q. 186. Where did the water that was running around the Country Club in 1909 come from?

A. It came from the north—from Canutillo, and north of there, and around that district.

Q. 187. What year did it come from the north of the Country Club, in that district?

A. I cannot tell you when it got there. I crossed it in 1903, and in 1905 and in 1909.

Q. 188. Where did you cross it in 1903—the one coming from the north?

[fol. 44] A. As far as I could tell, the one coming from the north, in 1903—I could not say where it came from; but I cross it at the time that I crossed it on the tree, that I spoke of awhile ago.

Q. 189. That was coming from the north at that time?

A. Yes, sir. I could not say where it came from because I did not go up far enough to see where is was coming from.

Q. 190. It was not coming from the west?

A. I would not say as to that.

Q. 191. It was not coming from what you have designated in your recent map as the "River of 1905?"

A. I could not say as to that. It is my impression that it was;

but I did not go up further north, in 1903, to see where it was coming from.

Q. 192. But, a little later, you went up to the north end of Survey 157?

A. That was in 1909; yes, sir.

Q. 193. Yes.

A. The north end of 157—I was in there in 1901, at the north end of it.

Q. 194. Yes, sir: And when next?

A. In 1901, I did, at that place; and at times when I was surveying up there. I had to cross the river, going west, between 1901 and 1909. And I crossed it at a point north of the south line of the Canutillo Grant, at a ford, almost west of Montoya.

Q. 195. When did that river first get there?

A. That was the main channel. That was the one that was caused by the flood of 1905—after it finally got settled into a channel. You find it in this place. That is, after 1905, when the flood waters stayed in the valley for a year or more, we find it there.

[fol. 45] Mr. Hardie: What do you mean by "There?"

A. (continued). In the district that we are speaking of now. There was only one exception that I know of, near Montoya, or Canutillo. It made a change a little above Montoya, and near the Country Club road,—I mean the Borderland road—extending west from the Borderland Inn,—by the rock dyke extending out some little ways from the Santa Fe Railway. Anyway, somebody put a dyke in there, and threw it out into the valley, and it got into the position that it is in now, practically.

Q. 196. And that river marked on your exhibit No. 65 flowed east of the Country Club?

A. In 1909, yes, sir.

Q. 197. Yes. Where did it flow in 1905?

A. It was flowing where I am now showing it on the map.

Q. 198. You said that it was the flood of 1905 that made the river.

A. Up to the flood time. You mean where it was flowing in 1905?

Q. 199. Yes, sir.

A. Well, sir, there was a change made in 1905, by avulsion, north of Anthony, all over the area. It was mighty hard to get in there, in places.

Q. 200. And the first you say you knew of this new river, this north river—was in 1905?

A. In 1909, you mean.

Q. 201. No, sir. The river that you said the flood of 1905 made, —the river that ran down east of the Country Club.

A. Yes, sir; it did.

Q. 202. It was not made in 1909, but was made in 1905, was it?

A. I believe it was. When it settled, it was the main channel. You see, there was water flowing all over the valley, at that time.

[fol. 46] Q. 203. But you said that at that time, in 1905, it was flowing east of the Country Club.

A. In regard to that flood, which caused the building of protective dykes in the vicinity of White Spur—at the time of the year that I was there, in 1903—in the early part of 1903—especially on the east side of the valley, next to the Santa Fe Railroad, there was a body of water all over that portion of the valley, which was striking up there against the Santa Fe Railroad, in the vicinity of White's Spur, which caused these dykes to be built. There are two old river beds, now, that, apparently, head from a point up in the Canutillo Grant, somewhere to the northwest; and they circle around and hit near the Santa Fe Railroad. One is near—right close—to the Hale place. I have seen water in there. And another one is around to the southwest of that. Just where those waterways came from, and went to, I don't know; except that we could trace them, in 1909, going down, pointing towards the Country Club buildings—where they are now.

Q. 204. Are those shown on this map here, Plaintiff's Exhibit No. 22?

A. I do not know. It is hard to trace them on that. (Witness examines map.) This shows, in the vicinity of White's Spur, what is marked here "Border," which I suppose is about the same thing that I am referring to as a protective dyke; which came out from the railroad, a little distance north of the old school building at White's Spur. Then it goes westerly, and then southwesterly, and then westerly again; and then southerly, still marked as "Border." And then it passes on down to the southwest, near the old pump house, between the present old Country Club building and the new Country Club building,—still marked as "Border." I presume that [fol. 47] is what I am referring to as "Dykes," or "Protective Dykes." I have not followed out these "Border" lines very well, but they seem to show—there are two parallel lines—more or less parallel—which I take to be the old river, coming on down and passing down to the east side of the present Country Club, and extending on towards the southwest. And you see the same thing on the westerly side, coming down and coming in north of the Country Club, and striking in to the same one that I have just traced out on this map, Plaintiff's Exhibit No. 22.

Q. 205. Now, Mr. Owen, neither one of these depressions, or old river beds, if they be such, to the eastward entrance of the Country Club, correspond to the river which you show as the "River of 1905," do they?

A. No, I don't believe so.

Q. 206. And are not running in the same direction?

A. This one to the west was the river, I know, during the year 1905, that came in from the north and circled around the Country Club. The other one seems to be an old river that had come in and extended easterly towards the Santa Fe Railroad, circling around to the east, and then bent again to the south and the southwest, to a point west of the Country Club, and the two unite at a point just north of the Country Club.

Q. 207. Where did that form?

A. I do not know.

Q. 208. You have seen it?

A. Yes, sir; I have seen it. I saw it in 1909.

Q. 209. Did you see it there in 1905?

A. I do not know. I was not there, at that point, in 1905.

Q. 210. The river which you show as the "River of 1905," run-
[fol. 48] ning along the Country Club road, which you show on your recent map which you made for this hearing, is not shown on this Plaintiff's Exhibit No. 22, at all, is it?

A. No, I do not think it is. I do not see it there.

Q. 211. Now, you said, Mr. Owen, that you surveyed, or found a channel corresponding to what you have put on your new map which is an exhibit in this case. How did you find that?

A. Now—what channel do you refer to, now? The one that I call the "River of 1905?"

Q. 212. Yes, sir; the one that is looping around to the east of the Country Club.

A. How did I find it?

Q. 213. Yes, sir. To mark it on your Exhibit No. 280?

A. Well, I knew, from the work that I did on the river, in different places, and especially on the westerly side of the Canutillo Grant, when the river was flowing over there, a body of water was found in there, and that was the main channel, and came around and struck the hills west of the Crawford Headquarters House, and passed on west and to the southwest, and then to the southeast, to near the southwest corner of the Canutillo Grant; and it was the river—the old Rio Grande; and then struck on west, a little further to the east; and then went to the south and then to the southwest, and struck the bluff which we call Bootlegger's Bluff; and then turned off to the east, in the direction of the Country Club.

Q. 214. In the direction of the Country Club?

A. Yes, sir.

Q. 215. I asked how you were able to find it, in making your map. Exhibit No. 280, in this case.

A. How did I find it?

[fol. 49] Q. 216. Yes, sir. How did you find it? Did you go and locate it, and meander it, and survey it, or did you take it from something else?

A. No. I made it from field notes of it. I made field notes of it, and made it from field notes of the L. M. Crawford Survey, and followed this old channel.

Q. 217. Made it from a plat?

A. No, from the field notes.

Q. 218. Well, if the field notes had been wrong, would you have been wrong?

A. No. The field notes followed the channel, and the old channel was there.

Q. 220. You did not make the field notes, did you?

A. No, I did not make the field notes, originally. I made them from retracing them.

Q. 221. In retracing them, how did you re-trace them?

A. I took the field notes, and followed them around, and took

and checked them up at different stations that I knew; and followed the field notes around, to find out if they would fit this old river.

Q. 222. Now, you were not looking for the depression, were you, but were following the field notes?

A. Yes, sir; I was looking for the depression. The main object was to find the depression. I had seen the river running up to within the vicinity of Survey No. 261, and No. 262, myself. I had meandered the bank of the river, along in there, in the year 1900; and in 1901 and n 1902—somewhere in those years; I forget the exact year; and it was actually the main channel of the river then.

Q. 223. Well, if you meandered it in 1901 or 1902, and meandered it according to the crooks and bends in these surveys that you show now, why did you show, at an earlier date, a river running along [fol. 50] the toe of the foothills, Mr. Owen?

A. Well, I have answered that—all that subject in regard to that place in there between the Santa Teresa Bluff and the southwest corner of the Canutillo Grant, and how that was put on, and why I did not carry it any further. I think I testified to that part in the year 1915—either 1915 or 1914.

Q. 224. Well, do you remember what you said about it, in those years?

A. I remember what I said, in substance.

Q. 225. From what did you obtain the data for the delineation, which you now show, where the changes occur between the 1905 river, platted on your Ehibit No. 65 and what you show on your plat 280?

A. Where did I get that information?

Q. 226. Yes, sir.

A. By actually surveying it out. Surveying out this old depression—this old river channel, that, in 1909, as I told you, was carrying water. By actually surveying out that old depression.

Q. 227. Why were you surveying it then, Mr. Owen?

A. Recently?

Q. 228. Up along the Canutillo Grant?

A. Along the Canutillo Grant?

Q. 229. Yes, sir.

A. Which side—south?

Q. 230. South-west. Both south and west.

A. Well, west of the Canutillo Grant, I surveyed in 1914 and 1915—up to the corner of the grant.

Q. 231. Yes, sir. Then, from the Grant, south, where you change from what you designate as the River of 1905—where did you get this data for this change?

A. As I stated, I was preparing a plat or map for L. M. Crawford—chasing out the field notes of that old river bed, and I actually [fol. 51] followed them out, to see if they fit in the old river bed, which I found to be the case.

Q. 232. Who is L. M. Crawford?

A. He owns the Crawford Theatre, here in El Paso, and is a theatrical man, and a business man.

Q. 233. What is he, as to being a land owner under New Mexico title?

A. All that I know of him, besides his owning this property up there, is that he is a theatrical man, and runs theatres.

Q. 234 All right: Were you employed by Mr. Crawford, for the doing of this work?

A. Yes, sir. That is, I was employed by his attorney, in this work, I suppose. I got a check from him.

Q. 235. We don't particularly care about that, but are just trying to prove some facts. Doesn't he come in under New Mexico titles?

A. Yes, sir: I think so. I believe he does.

Q. 236. He claims quite an extensive area of land, along the foothill border?

A. Yes, sir.

Q. 237. Southwesterly of the Canutillo Grant?

A. Yes, sir. If I am not mistaken, the object of that survey and map was for the purpose of showing the conflicting lines of the Crawford claim and of the Texas claimants under the Texas patents. I had formerly shown, upon a print, for Mr. White, which he had, the lines of the L. M. Crawford claim—the lines claimed by him. Now, Mr. Crawford, as I understood it, wanted to know what lands he had, that were subject to taxation in New Mexico; and for that reason I was called upon to make the plats, which I at first declined to make, for obvious reasons; but, afterwards, when I found that [fol. 52] there was no objection on the part of anybody, and it was insisted upon, I went ahead with the map.

Q. 238. Did Mr. Crawford have any land, anywhere, subject to taxation, except in New Mexico?

A. Well, some of his land extended over into Texas, according to the claims of these Texas claimants.

Q. 239. That was the object of your doing this more recent work, and the making of this map?

A. Yes, sir.

Q. 240. And the property in controversy, now, Mr. Owen, is the El Paso Country Club property?

A. I believe so.

Mr. Hardie: I think I will object to that, as being the conclusion of the witness; because the property in question now, I think, lies all between the south line of the Canutillo Grant and Piedras Paradas. Of course Mr. White and Mr. Crawford adjusted their personal differences, as to the other property. But, as for as this suit is concerned, why the property is south of the Canutillo Grant, to Piedras Paradas.

Q. 241. You were not, in the doing of this work, which was just for this present hearing and investigation, employed by the State of New Mexico?

A. No, sir.

Q. 242. Nor by anyone for the State of Texas?

A. No, sir. Not that I know of.

Q. 243. And you were not, then, engaged on behalf of the State of Texas.

A. No, sir. And I have not been, since the year of 1915.

Q. 244. Then this is in the nature of a private controversy?

A. I presume so. Of course, I am not the judge of this. But [fol. 53] I have been paid for all the work that I have done on the Crawford proposition, either directly from Mr. Crawford, or through Mr. Hardie, his attorney, or through his son.

Q. 245. Well, we are not questioning about that.

A. Well, that is all that I can tell, about who employed me, or the nature of the case.

Q. 246. Do you know the value of the Country Club buildings?

Mr. Hardie: I think that that is wholly immaterial to be put in issue in this case—as to the value of the Country Club buildings; and I object to it on that ground.

A. I would like to have the money. I do not know what it is worth, without going to the record. I think it is worth over a hundred thousand dollars; or something like that.

Mr. Turney: Well, if you don't know, we will show it by something else.

Q. 247. Mr. Owen, in a former hearing in this case, back in December, 1914, we were discussing the river lines on the west side of the valley, and you were tracing the river lines south of the Canutillo Grant; and you say—page 2655 of the printed record of that testimony, in volume 5, near the bottom of the page—"This old river is quite distinct and deep, showing that it is a recent river. Now, this old river, looking from this point where it crosses the Canutillo Grant line, as I have just described, down stream, that is, in a southwesterly direction—obliterates for a distance—this first old river which I am endeavoring to explain. I have surveyed this deep old river that I am just now saying crossed and cut out and obliterated in places the other old river which I claim is in proximity to the position of the Canutillo Grant line in that vicinity.

"Going northwest from the northwest corner of the Canutillo Grant, and following the field notes of Anson Mills of 1860—that [fol. 54] applies to the field notes of that date, when he surveyed the Antonio Rodriguez Survey No. 172—you will find that stations twenty-four, twenty-three, twenty-two and twenty-one will be located when placed as he placed them—or as his field notes show that he placed them—upon an old river. You may set flags at those stations, so placed, and walk back along the line between those stations, and you will today be able to trace out the old depressions." Now, what river was this that you were talking about?

A. Why, that was up on the north portion of the valley, up north of the Canutillo Grant; from the northwest corner of the Canutillo Grant, running northerly, in the direction of the 32nd parallel.

Q. 248. Now, do you say that that is part of your "River of 1905?"

A. No. I took that to be the river, or part of the river, that was left there after the Mills Survey, in 1860, I believe. And from there up, for quite a ways, an old river bed checked with the Anson Mills field notes of the Antonio Rodriguez Survey, closer than in other places in the valley where the old river was; and the Mexican field notes—the Salazar field notes—in that district, were very close, and crossed and re-crossed the Mills line; and stayed together very closely.

Q. 249. And, on page 2652 of the printed record, the fifth line from the top of the page, you say: "The old river shown upon this map" (You were referring to Plaintiff's Exhibit No. 65) "near the western margin or side of the valley, as of 1905, was surveyed by me, by course and distance, and the upper portion of this survey has already been explained in my testimony during Saturday. The lower portion of it, from that point south, was surveyed during the present year."

[fol. 55] A. What point is that?

Q. 50. I don't know, yet. We may be able to tell, later on. "From a point on this old river, as shown on this map, as far southerly as where it is shown here on this map to connect with the present Rio Grande, I do not claim to show this portion as a part of the Rio Grande of 1905."

A. That is the very part that I refer to right here (indicating on map marked "280" at this hearing)—from the corner of the Canutillo Grant down to the Santa Teresa Bluff, and the old Santa Teresa House.

Q. 251. I am coming to that: "But that portion is the bed of an old river, which is today not so distinctly marked as the portion further north. But when I first did work in that immediate vicinity, and before the valley had been flooded and remained flooded a great portion of the time during several years; and especially during the last two or three years, there have been two blind ditches emptying into that part of the country and filled up this old bed."

A. That is a river from near the foot hills.

Q. 252. Yes and the sloughs. "Now, previous to that, this old river bed which I show here along the foot-hills, between the points specified above, was very clear and distinctly marked"—now that is where you surveyed north and also surveyed south—"and the depression was perfect for an old river bed. But now—that latter portion of this testimony—I do not know whether it is exactly out of place here or not—but it is the result of former experience and former knowledge. I have shown that portion of this river as I have described, for the benefit of three or four surveys made by [fol. 56] Texas, all of which have been patented by one of those four, for the reason, as Mr. Campbell explained, that there might be some manner of doubt as to their correct location." Now, Mr. Owen, at that time were you not sure, or felt sure, that there was a continuous river of 1905 along the toe of the foot-hills, including the new point where you say it bulged or went off east, around the Country Club?

A. I was not sure. The point that I say I was not sure of, and which I state in that volume that you have been reading from, was

the distance between the southwest corner of the Canutillo Grant, and along the foothills, down to this Santa Teresa Bluff. That was the part that I was not sure about.

Q. 253. But, Mr. Owen, you said that, while you had not surveyed it, yet you had occasion to be very sure or to know it was a continuous river of 1905.

A. No. I said it was no doubt about it being a river, as made in that particular district. We may have been discussing some other portion; I do not know. But I distinctly said that I was not sure about this being a continuation of what I knew, above, to be the channel of the river of 1905. That old stream, or old bed, along the toe of the foothills, and south of the Canutillo Grant—I have known it when it was practically all the way down—and in many places all the way down, through that district—that distance, knee deep, or more—which today you cannot see at all. Even in 1914 it was much plainer than it is now. Even within the last two months, I have made a survey of some of Mr. Crawford's lines—between he and Mr. White—and followed along that toe of the foothills; and you can hardly find it, except in one place, and that is at about half a mile of the distance down here below the Canutillo Grant, [fol. 57] where the drainage ditch is; and the rest of it is all gone. And, as to the continuation of that, I have always said—and I have said this in my testimony in the past, that its disappearance might have been caused by water coming in there, and carrying immense volumes of water from the foothills, and silt, or by overflows, when the valley was full of water. But I do not know just what caused it.

Q. 254. Or through some blind ditches turned loose there?

A. Yes, sir.

Q. 255. That would fill up any river?

A. Yes, sir. There were two ditches, blind ones, turned loose in there, one known as the East Ditch and one known as the West Ditch. One of them came down from Mr. Crawford's property, and after it got through his property it just emptied, through the country there. And then this ditch that is up by this new Country Club Road, that goes on to the east, and north—that just emptied out and kept the country flooded there.

Q. 256. But you say, Mr. Owen, that that portion of the old river depression which you have seen was distinctly marked?

A. It is, very distinct, yes, sir; that is, as I first saw it. I know it was, in places.

Q. 257. But you say now that it has disappeared?

A. Yes, sir; it is practically all gone now.

Q. 258. Isn't it true that sand is flooded in there from the hills, right along?

A. Yes, sir.

Q. 259. Immense quantities of sand comes in there?

A. Yes, sir; there is one place that I came across, in there, where [fol. 58] the sand is washed out into the valley for a thousand feet. There were tall bushes there, formerly, and a few years ago you could just see a little of the tops of the bushes sticking out.

Q. 260. Now, where did those two blind ditches empty, about—

according to the survey shown on this Exhibit No. 65? If you can tell.

A. I can tell, very closely. I am pointing, now, to the headq-arters house of the property of Mr. Crawford—this little square on the map representing the house. That is the lower of main headquarters house. The west ditch came in from considerably to the north, and passes along a little to the west—a few hundred feet to the west of that house, running in a southeasterly course; and came on down into what is shown here as Survey No. 262, and not very far from this "Station 33" of the Salazar field notes, and ended there. And it simply flooded the valley. The other one—what is known as the East La Union Ditch, came in from the north, a few hundred feet east of the Longuemare house, having come from away up north, near the 32nd parallel, probably, and passing down through the Canutillo Grant, and emptying into Survey No. 261, about midway of the north line, and ended blindly; and the water just flowed everywhere. Those are the two blind ditches that I referred to.

Q. 261. Do you know what percentage of the local or high flood of those ditches is silt? What percentage of the water is mud, in other words?

A. Well, before the Elephant Butte Dam was put into operation, to control the water, the percentage was very high. I expect that it would run, then, as much as twenty per cent. Now, I have seen dams thrown across low places in the valley by farmers—and I have seen them myself—dams up as much as five feet high—to fill up the low places; and the water would be turned in there, to fill up [fol. 59] these low places, and in five or six fillings it would level up the land. That would be twenty or twenty-five per cent., at that time. I do not know what it would be, now.

Q. 262. Don't old river beds and old currents fill up as rapidly as this ditch that you mentioned?

A. Well, hardly, I believe. Because, over there, the river was all stopped in a small place—a small channel; and it deposited there where it stopped. Where a river is flowing slowly, and depositing sand, it will fill up very rapidly.

Q. 263. When were these ditches that you speak of constructed?

A. Oh, I don't know. I think they were constructed along about 1906, or 1907 or 1908. Somewhere about that time; or maybe a little later; but it was a number of years ago; eight or ten years ago.

Q. 264. Do you remember making an affidavit concerning some land of Z. T. White, before Robert L. Holliday, Notary Public, on the 15th day of November, 1916?

A. I do not remember.

Q. 265. I will ask you, Mr. Owen, if that is your signature (showing a paper to the witness)?

A. Yes, sir.

Q. 266. You do not remember anything about testifying, in an affidavit, about Surveys 156 and 157—the Country Club lands, and other lands of Mr. Z. T. White?

A. No. That is eight years ago. No, I do not remember it.

Q. 267. It seems that there was a controversy between Mr. Crawford, as Trustee and Charles A. Longuemayer and others, in the District Court of Dona Ana County, New Mexico, in the Third Judicial District of New Mexico. Do you know anything about that?

[fol. 60] A. I have a faint memory of it; of the fact that there was a suit.

Q. 268. Did you do any surveying in connection with that suit?

A. I disremember. I may have done some. My field notes will show it, if I did. I don't remember now.

Q. 269. Did you not make a map, which you made in connection with the affidavit which you made on that date? The map which was marked "Exhibit A" to the affidavit, showing the character of the location of the river, and the survey lines of 156, 157 and 158; and 259, 260, 261, 263, 264, 265 and 267?

A. I do not know, now. It is possible. Whatever I said there, I suppose I did. But I do not remember anything about it, now.

Q. 270. Well, we are all liable to forget things.

A. Certainly. I have made, I expect, a hundred affidavits in regard to patents for land in New Mexico; but I could not tell you, today, who I made them for. I might, if I had gotten any pay for them. That was the way, right along.

Q. 271. Well, whatever you said in any affidavit was intended to be the exact truth?

A. So far as I knew at the time, yes. I want to say that I did not refer to Mr. White, when I said I did not get any pay, because he has always paid me.

Q. 272. Is George Wafer living, or dead?

A. He is alive, I am quite sure.

Q. 273. Where is he, do you know?

A. He is either Customs Collector or Line Rider, at Fort Hancock, Texas—No, I was thinking of Jim. George is here. I do not know what he is doing, now.

Q. 274. I will go back again, to the question—for a moment—of [fol. 61] the matter of your running this line around the Country Club. Did you take any levels, in there?

A. No, I do not think that I took any levels in there.

Q. 275. You were guided largely by field notes of surveys that you knew?

A. Yes, sir; largely.

Q. 276. Were not you guided entirely by field notes of other surveys that you knew?

A. Well, I was guided by field notes.

Q. 277. Of surveys, and your river channel: Is it not true, Mr. Owen, that some of the highest land in the valley, lying east, and west, along the road, is exactly where you have put this river?

A. It is a common fact that a river that remains in the same place for many years—that the whole country slopes away from it. You get away, two or three miles from the river, and you will find its elevation higher at the river. When the river broke through,

and came by Anthony, you will find that it settled in the highest place in the valley.

Q. 278. Mr. Owen, the flow of the valley—the slope—is always from north to south, isn't it?

A. In this valley, yes; that is, the general slope.

Q. 279. And the fall of the valley, you said, was about four and a half or five feet—was it not, to the mile?

A. Yes, sir; something like that.

Q. 280. Four and a half to five feet to the mile.

A. Yes, sir.

Q. 281. That would be true, continuously, from the 32nd Parallel down to the Courchesne Bridge?

A. Yes, sir.

Q. 282. With the greater fall the further you get down.

[fol. 62] Yes, sir; that is true.

Q. 283. Now, this river that you have shown running around the Country Club is not following the natural course, and going southeasterly with the fall of the valley?

A. No, sir.

Q. 284. But is running across the valley?

A. Across the general slope.

Q. 285. As shown by Plaintiff's Exhibit No. 22, it is going over the highest ground in the valley?

A. Yes, sir. It often bends. Going to the south, it will make a bend to the west, and then to the east, and go back again, all depending on the nature of the soil and the course of the stream.

Q. 286. You do not pretend to say that from where this river that is running around the Country Club, as shown on this Exhibit No. 280, leaves the river of 1905 as shown on Exhibit No. 65, it is now distinguished by a channel all the way, do you?

A. Today it is not. In places it has been graded out absolutely, and filled up. In other places it is very clear, yet. There is a place south of the Bell Pool that it is very clear. There is a place right at the Bell Pool where the bank is high, yet—probably a foot and a half high, or higher.

Q. 287. Are there not numerous places in the valley with just as distinct old river channels as that, where no one remembers when the river was there?

A. Yes, sir; in places.

Q. 288. Then, the finding of a channel, at some place not yet filled up, and it appearing at another place, is no criterion that there was a river there at some time—a continuous river?

A. Not necessarily, no, sir.

[fol. 63] Q. 289. Is it not true, Mr. Owen, that during flood-time, and before the Elephant Butte Dam was finished, and the water controlled by the Reclamation Service, that just after these floods you would find numerous channels in the valley, in different places?

A. Yes, sir; it is.

Q. 290. And those channels would have all the aspects and appearances of real live river channels—yet they carried only flood waters?

A. That is true. But yet, not as large as a real channel.

Q. 291. But yet as large as a real channel would be, a few seasons later, after it had ceased to carry water?

A. Oh, yes, I should say so. That is a matter of judgment and experience; but I would say so.

Q. 292. You would have no difficulty whatever, when you were making these surveys, in going north of the Country Club and finding a river bed almost anywhere, would you?

A. No. I could not say just where; but you would find them in most any direction that you went.

Q. 293. And that is true, also, in recent years, is it not?

A. Yes, sir. I have one in mind, that impressed itself very clearly upon me: Driving, one night, about the year 1911, from Survey No. 262, in a northeasterly direction, aiming to reach Canutillo for the night, I ran into one, about eight o'clock at night, and got stuck; and had to take the horses out. We struck a light with a lantern, and got the horses out, and got on a little knoll, and stayed there all night. And next morning we found that ahead of us was a lake—an old river bed, that was in places about hip deep. And so at times, in places, you were liable to get into places that were filled up from the rains—most any place, like that. And when the [fol. 64] water went out, you would find it was an old depression there.

Q. 294. And whether you went by team or by the railroad, and crossed the river, you would say it was the river bed?

A. Yes, sir. During the time that I was working on this case, before, you had me survey all the old river channels I could find, up there in that country; and there were so many of them that we didn't even map them all; but only took the field notes of them.

Q. 295. If there were some in the south, that we had been hunting for, we could have found them?

A. Yes. We found so many of them that we got tired, and quit.

Q. 296. Now, all these things have been very materially changed, since the ditches have been built, and the government has assumed control of the water and ditches up there?

A. Yes, sir; they have all been changed; and the people are using grading machines, and fresnos, and are filling up these old places, and leveling them up.

Mr. Turney: I believe that is all I have to ask, this afternoon. It is now after four o'clock.

Thereupon an adjournment was taken; and the further hearing of this cause was continued until tomorrow morning at ten o'clock.

And, at ten o'clock in the forenoon of Wednesday, May 7th, 1924, the same persons present as on yesterday met at the office of Hon. W. W. Turney; and the witness R. J. Owen resumed the stand; and his examination was proceeded with, as follows:

[fol. 65] Cross-examination (continued).

By Hon. W. W. Turney:

Q. 297. Referring, Mr. Owen, to Defendant's Exhibit No. 65, which has on it some station marks: I will call your attention to "17," below the district in question, and to station "25," above the district in question. Now, between those two points, in your opinion did the river of 1905 ever run along the toe of the Western foothills?

A. Well, I can answer that by saying that on this Exhibit No. 65, at a little southeast of station 25, you will see the point of the hills bulging towards the east; and, beginning at that bulge in the foothills, and following down the foothills towards the southeast, until we reach the Santa Teresa Bluff, there is a pronounced old river bed, which is now partially occupied by the drainage ditch. I do not attempt to reach a conclusion as to how that was formed—whether it was formed as a part of the 1905 river, or by what; but it is thoroughly pronounced. It may have been formed by that 1905 river at some time; or it may have been formed by overflow from that 1905 river; or it may have been formed from other causes. But it is well pronounced.

Q. 298. How much of the district that I have described there has any evidences of the old river bed—between the points "25" and "17" on that map?

A. Well, there is about two-thirds of that distance, I should say, that shows the old river bed well pronounced.

Q. 299. And that would be the lower or southerly portion?

A. Yes, sir.

Q. 300. In your testimony on the first day of this present hearing, you stated, in substance, that the river which curves around to the northeast and south of the Country Club, may have been formed [fol. 66] by accretion, or that it may have been formed by the river of 1905 striking the bluff on the west side of the valley.

A. That is the bluff that we called the Bootleggers' Bluff.

Q. 301. The Bootleggers' Bluff; and then being deflected along the course which you have shown on the map made for this hearing; and around the Country Club, by virtue and by reason of striking that bluff on the west side of the valley.

A. I said that, in substance, yes, sir.

Q. 302. If it was so formed, would that formation be by accretion or by avulsion?

A. Well, I intended to say, in saying what I did, if it did form in that way when it came around by the Country Club, it would have been an avulsive formation.

Mr. W. W. Turney: I desire to read into the record, now, the affidavit made by Mr. Owen, in a case styled "L. M. Crawford, Trustee versus Charles A. Longuemare, et al.," in the District Court of Dona Ana County, New Mexico—in the Third Judicial District of that State, which is dated the 15th day of November, A. D. 1916; for the purpose of examining Mr. Owen with reference to the same.

The affidavit reads as follows:

"In the District Court of Dona Ana County, New Mexico, Third Judicial District

L. M. CRAWFORD, Trustee,

vs.

CHAS. A. LONGUEMARE et al.

Before me, the undersigned authority, on this day personally appeared R. J. Owen, known to me, and who, being by me first duly sworn, upon his oath deposes and says:

[fol. 67] That my name is R. J. Owen; I am 52 years of age and am a civil engineer and surveyor by occupation. I have lived in El Paso and State of Texas since 1889. I know the location upon the ground of surveys Nos. 156 and 157 involved in the suit of L. M. Crawford, Trustee, vs. Chas. A. Longuemare, et al., No. 4107, Civil, pending in the District Court of Dona Ana County, N. M., having surveyed said surveys upon the ground, and have surveyed all of the other immediate surrounding surveys as patented by the State of Texas, being numbers 156, 157, 158, 259, 260, 261, 263, 264, 265 and 267, which said surveys are shown upon the map hereto attached, marked "Exhibit A" and referred to as a part of my affidavit; said surveys so designated and shown upon the map were actually made upon the ground by me from the field notes of the original patents from the State of Texas of the respective grantees or assignees in said patents from said State, and that said map correctly shows the location of said surveys upon the ground. The attached map, marked Exhibit A, correctly shows the location of the Rio Grande river at the time of the location of the said surveys upon the ground in accordance with the original patents from the State of Texas, which original surveys of said respective patents were made upon the ground upon which said patents were issues, as follows:

Survey No. 156 in the year 1859.
Survey No. 157 in the year 1859 and re-surveyed in 1873.
Survey No. 158 in the year 1860.
Survey No. 259 in the year 1871.
Survey No. 260 in the year 1871.
Survey No. 261 in the year 1871.

And in accordance with the field notes, said respective surveys, made at the times last above mentioned, the Rio Grande river at said time was located as shown upon the map marked Exhibit A, as running from B, C, D and E, and all of said surveys being located wholly within El Paso County, State of Texas.

[fol. 68] I am also familiar with the location upon the ground by actual survey of the 125 acres of land described in defendant's joint amended answer as being the land to be donated by Z. T. White to the El Paso Country Club of El Paso County, Texas, having made

upon the ground the survey from which said field notes were taken in describing said 125 acres, and I have shown the location of said El Paso Country Club site upon the attached map, designating same as "El Paso Country Club site F."

I have been intimately acquainted with the said two surveys Nos. 156 and 157, involved in this litigation, and all other surveys in the immediate vicinity to said two surveys, since 1901, having surveyed each of said surveys upon the ground from the field notes of the original patents from the State of Texas to the respective grantees or assignees as mentioned in said respective patents. The boundaries of said surveys are designated upon the map hereto attached. The occasion of my intimate knowledge of the location of the boundaries of the respective surveys was from actual surveying work upon the ground and I located the position of the Rio Grande river during the years from —— to —— by an actual survey upon the ground. I have also done extensive surveying work upon the ground of the land now in litigation pending before the United States Supreme Court, wherein the State of New Mexico is plaintiff and the State of Texas is defendant, which said litigation is for the purpose of locating the boundary line between the states of New Mexico and Texas, and from the work which I have done upon the ground I found all of said surveys lying wholly within the State of Texas according to the claims of the State of Texas in said boundary suit. From the year 1901 until the year 1910 and 1911, I know of my own knowledge that part of survey No. 156 was in cultivation, growing alfalfa and other crops thereon, and was in the possession of and claimed to be owned [fool. 69] by Z. T. White, one of the defendants in this litigation; and also that the southern portion of survey No. 157, more than two-thirds of survey 156, and all of survey 158, and the southern portion of survey 267 has continuously been under fence and claimed by Z. T. White since I have known said land in 1901, and that Z. T. White has exercised control and possession of said lands under fence since said date. He also claimed possession and control and was using during said time the other parts of surveys 156 and 157 which were not under said fence. That the said Z. T. White was upon the 125 acres described in the defendants' joint amended answer at the time of service of the injunction writ, and the citation in this case, was made, and that I know all of said 125 acres as described in the defendants' joint amended answer is partly in survey 156, partly in survey 157 and partly in survey No. 158 as shown on the map hereto attached, and that the three said surveys lie wholly within the boundaries of El Paso County and State of Texas as shown on the map, and that at the time the said Z. T. White was served with the writ of injunction and citation in this cause, I was doing engineering and surveying work for him upon said ground."

(Signed) R. J. Owen."

Subscribed and sworn to before me this the 15th day of November, 1916. (Signed) Robert L. Holliday, Notary Public within and for El Paso County, Texas."

Q. 303. Mr. Owen, have you today read this affidavit?
A. Yes, sir.
Q. 304. Do you find it to be true?
A. Yes, sir.
Q. 305. In accordance with the facts as you knew them at the date that was made?
[fol. 70] A. Yes, sir. And I would like to state, as to the location of the fences that are referred to in that affidavit, which I signed in 1916—whether or not those fences were actually upon the survey lines, all the way through—I don't believe that I intended to convey that idea—that they were actually on all the lines, at all the places.

Since my testimony of yesterday, I have thought a good deal about that; and, without going over all my field books, I can say that I distinctly remember, now, that, in crossing these surveys in question, at various times during the three years previous to the making of this affidavit, and while I was engaged on this boundary dispute, I crossed two of these surveys, in different directions, a great many times, on foot and by wagon. Now, I remember places where we came into these surveys from the direction of White's Spur station. We aways crossed the railroad at a crossing right out of the station of White's Spur; and then drove over in the direction of the pump house; and we often crossed this old river bed, right near the pump house; and sometimes we would cross it a little further north, and then drive across to the 1852 line, or whatever we were working upon. Now, I remember, during those years, that there were several little huts or jacals in the bushes, there, occupied; occupying little cleared places in the bushes; that the Mexicans were living in, or had lived in, and that they were cultivating the land in various places around there, over those surveys 157 and 156; and there were patches, all through there, that were under cultivation. And we crossed fences, and such as that. But as to the exact location of those fences, I don't think I ever intended to say that they were actually on the survey lines, as the survey called for them. But the country was pretty well fenced up.
[fol. 71] Of course, in *either* years, a man's memory will not retain all of the things that he did know. And I believe that in what I said in that affidavit, as I do now, I was telling the truth or attempting to tell the truth.

Mr. W. W. Turney: I believe that is all that I care to ask at this time, on cross-examination.

After discussion between counsel, it was decided to take a recess at this time, until 1:30 o'clock in the afternoon; which was accordingly done.

And, at 1:30 o'clock in the afternoon of Wednesday, May 17th, 1924, pursuant to recess, the further hearing of this cause was resumed, and the following proceedings were had:

Redirect examination.

By Thornton Hardie, Esq.:

Q. 306. Mr. Owen, just before we went out to lunch, you identified this affidavit which you made in 1916.

A. Yes, sir.

Q. 307. Who prepared the wording of that affidavit?

A. I don't know.

Q. 308. What attorney made that up?

A. Judge McKenzie, I think it was.

Q. 309. Now, on the 16th day of November, 1916, when you signed this affidavitfi a hearing had been held, and the testimony taken had been completed, had it not practically? I mean a hearing and taking of testimony in the boundary suit.

[fol. 72] A. Yes, sir.

Q. 310. And you were familiar with all that testimony?

A. To a certain extent, yes. I heard it all.

Q. 311. Now, you know that at that time the contention of the State of Texas was that the boundary between Texas and New Mexico was located wherever the river flowed in 1850, did you not?

A. Well, yes, because the definition of the boundary between the United States and Texas was the 1850 river.

Q. 312. And was it not the contention of the State of Texas that the settlement of the question of the location of that river in 1850, would be final as between the two parties?

Mr. W. W.Turney: Wait a minute: It is set forth in the pleadings what the contention is. The plaintiff and the defendant have both pleaded their cause; and the pleadings would be the best evidence.

Mr. Thornton Hardie: I want to show his familiarity with the case.

Mr. W. W. Turney: Well, we object to it.

Q. 313. You were familiar with the contention in this suit, were you not?

A. Yes, with the contention of both sides.

Q. 314. And was not the contention that it did not make any difference where the river ran, at any other date, but the question of the location of the river of 1850 was the determining question in the case?

A. I do not know about that; but I presume that was true.

Q. 315. Well, that was your understanding—that that was the case?

A. Yes ,sir.

Q. 316. And was it not also your understanding, from your knowledge of the controversy, and the instructions as to the work that you were doing, which had been given to you that in the matters [fol. 73] of this suit, and the fixing of the boundaries between the two states, the question of accretion and avulsion had nothing to do with the case?

A. I got the impression that the question of accretion and avulsion would not enter into the suit.

Q. 317. And you also understood, did you not, that if you could

establish where the river was in 1850, that that would establish the boundary between the two states?

A. That was my impression.

Q. 318. And that continued to be your impression, and was still your impression when you made this affidavit, was it not?

Mr. W. W. Turney: That is not a particularly leading question. It is not entirely necessary to suggest the answers.

A. If that could be established—where it was in 1850—why it was my impression that that would control.

Mr. Thornton Hardie: I think we might have a stipulation that that was the contention.

Mr. W. W. Turney: We would not want to make any stipulation. However, Mr. Owen was not asked anything about accretion and avulsion, on his former examination.

Q. 319. Now, Mr. Owen, that map which you prepared—Exhibit No. 65 of Texas: There shows, on that map, the line of the river of 1852, as claimed by Texas? That is shown, is it not?

A. Yes, sir.

Q. 320. And that line which is shown on that map, Exhibit No. 65, as the survey of Salazar, under the treaty of 1848—that was the line for which Texas was contending, as the boundary line between the two states, during that hearing, was it not?

[fol. 74] A. I think so. But there was more testimony, and more work done on that line, by the State of Texas, than anything else.

Q. 321. Well, you knew that that was the line that Texas claimed, did you not, when you did the work? That was your understanding?

A. Well, now, the attorneys did not tell me what they would finally base it on; whether they would base it on that line or not. But my presumption was that they would base it on that 1852 line.

Q. 322. And that was your understanding, and continued to be your understanding, at the time you made this affidavit?

A. Well, I think so. They did not tell me what they were basing it on, though. They did not tell me they were basing it on that.

Q. 323. Well, you knew what they were doing, and discussed this information that you were obtaining for them, with them; and you had every reason to believe that that was what they were contending for?

A. I did not know what they were thinking about; but that was my impression.

Q. 324. Judging from what you did and what they told you, and what you were finding out, you gained that impression?

Mr. W. W. Turney: Wait a minute: I don't know, but I don't think that is proper. It may be that Mr. Owen was telling the attorneys what to do. I object to that form of questioning.

Hon. Frank W. Clancy: The propriety of it might be as tending to explain something that Mr. Owen may have stated in this affidavit. He wants to dive into the depths of his mind, and find out what was in his mind at the time that he made that affidavit.

[fol. 75] Q. 325. Now, Mr. Owen, that 125-acre tract of land that was donated by Mr. White to the Country Club; am I correct that that land, as shown on that map, was in your opinion, in the State of Texas?

A. Yes, sir.

Q. 326. Now, that tract that you speak of, then, Mr. Owen, was to the west—a large part of it was to the west of the line which is designated here as having a direction of N. 0°1′ E., and having a length of 3,288.8 feet?

A. A part of that survey was west of that line that you have mentioned, and part of it was to the east; it came over east as far as the easterly line of 156.

Q. 327. And how far did it go to the west?

A. It went over to the west some little distance into 157.

Q. 328. Now, Mr. Owen, this line that I have spoken of as having a course of north one minute east, and a length of 3,288.8 feet—that would be the east line of L. M. Crawford's deed from the Santa Teresa Land Company, provided it followed the course and distance, and did not meander the river at that place, would it not?

A. Yes, sir.

Q. 329. Now, at that time, was it the general opinion that that was the extent of L. M. Crawford's claim at that place?

A. That was my opinion, and that was Mr. White's opinion.

Q. 330. That that was the extent of Mr. Crawford's holdings?

A. That was the impression.

Q. 331. Now, after this controversy came up here, the Country Club abandoned all of the property which was to the west of that line having a course north one minute east, and a distance of 3,288.8 feet?

A. Yes, sir.

[fol. 76] Q. 332. Then the Country Club at that time moved off of all that it understood was the property claimed by L. M. Crawford, did it not?

A. Yes, sir.

Q. 333. Subsequently they took a deed or a contract from Z. T. White to property to the east of that line having a course north one minute east, and a distance of 3,288.8 feet?

A. Yes, sir; except to the south of the old river bed.

Q. 334. Then, Mr. Owen, the Country Club did not at that time accept from Mr. White a deed to any property which it at that time believed was described in the Crawford deed, did it?

A. I think not. I know they did not. I knew the lines.

Q. 335. Now then, you also know that, subsequently, the Country Club acquired some kind of a contract, either with Mr. White or with the Santa Teresa Land Company, for a New Mexico title to this property on which the Country Club was afterwards built?

A. Well, I could not answer that.

Q. 336. That is your impression, is it not?

A. Well, that is my impression; but I do not know the facts about that *Q. 336.* And isn't it the fact that the first building that the Country Club put up was located to the east of his old river bed?

A. Yes, sir.

Q. 337. And entirely to the east of this River of 1905 as shown on this map?

A. Yes, sir.

Q. 338. Now, at the time of the putting of that building on there, don't you know it to be the fact, or haven't you information leading you to believe that they had secured a contract from either the [fol. 77] Santa Teresa Land Company or from Mr. Z. T. White, for a New Mexico title to that land?

A. I knew they had secured an instrument from Mr. White, about that, yes.

Q. 339. To convey to them the New Mexico title?

A. Well, I don't know about that. I surveyed it out.

Q. 340. Didn't you run the field notes there, for that?

A. I ran the field notes for the deed for the land, Mr. Hardie, as called several times by course and distance; but, as to what title they were getting from the Santa Teresa Grant, I did not know that then, and I do not know it yet. I do not know about Mr. White's affairs. I have understood, however, that he has given—since he had acquired the stock of the Santa Teresa Grant, that he had given some deeds. But I do not know it to apply to this one case. In a general way, that is my information on that subject.

Mr. Thornton Hardie: Do you want to stipulate about what the facts are, Mr. Turney?

Mr. W. W. Turney: I do not know anything about it, and therefore I could not stipulate.

Q. 341. Mr. Owen, is there any doubt in your mind of the fact that the Rio Grande in 1905 had its main channel approximately along the line which you show on this map marked No. 280 in this case, and shown as the river—in some places called "1905;" and in some places "1908;" and in some places "1910?"

A. I believe that that was the main channel of the river at that time.

Q. 342. Are you throughly convinced of the fact that it was?

A. That is my firm belief, yes.

Q. 343. Does this map marked No. 280 correspond with the maps shown in the former hearings in this case, as showing the river [fol. 78] of 1903, made by French?

A. It is my firm belief that it does.

Q. 344. Mr. Owen, this map I had reference to, this Plaintiff's Exhibit No. 21, in the original hearing. Now, the line which you show as the River of 1905 on your map No. 280, is approximately the same as this map made by French in 1903, for the then original channel of the Rio Grande river, from a point directly south of the northwest corner of the Canutillo Grant, and extending down to the Piedras Paradas, is it not?

A. Yes, sir; I believe that that is the same location.

Q. 345. On this map, which is a copy of French's map, that line would be the channel of the then river, in 1903?

A. That is what it shows.

Q. 346. And, according to your information as to that district, is it your opinion that that is correct?

A. It is my opinion that that is correct, yes. Of course I have not applied any scale to that map, or anything like that; but, judging by the appearance of the maps, I would say that it is.

Q. 347. Now, Mr. Owen, I believe you stated, the other day, that about 1905 they had a big flood in the valley, that covered the whole valley, for quite awhile?

A. Yes, sir.

Q. 348. And after the river had subsided, the river had moved over to the east—to the east side of the valley, where the Country Club is now and the dividing line between New Mexico and Texas?

A. Yes, sir.

Q. 349. But when the water went down, the main body of water in the river continued to run in the same channel it had occupied in 1905, from a point approximately at Station 47 on your river [fol. 79] of 1905, on your map marked No. 280, which is a short distance east of the west line of Survey No. 156, having before run in the same channel occupied in 1905, or appriximately the same channel, along its old course, until that said channel comes backs into what is now the Rio Grande?

A. Yes, sir.

Q. 350. It then continued to run, from about 1905, to the east of the Country Clob buildings, and around on this line shown on the map for the Rio Grande of 1905, until at least some time after the year of 1909, did it not?

A. Yes, sir.

Q. 351. And then, Mr. Owen, after 1909—I believe you said that you did not know the exact date—the river made another avulsive change, by which it cut across above the north line of Survey No. 157, and ran over to the position which it now occupies—did it not?

A. Yes, sir; that is right. That change was made up in Survey No. 264, a little to the south of the Canutillo Grant's south boundary.

Q. 352. Now, Mr. Owen, I believe that you said something, this morning, about if the river had been running against this Bootleggers Bluff in 1905, and then about "26" on that River of 1905, ran out in an easterly direction; and that, if that river changed from its position running down near the foothills to the position to the east of that, that that would be an avulsive change.

A. Yes, that would be a fact.

Q. 353. However, you still do not say that there was a main channel of the Rio Garnde along the foothills, at that point, and below there?

A. No, I do not say that.

Q. 354. Now, Mr. Owen, you were asked about the frequency with [fol. 80] which the avulsive changes were made in the valley. Is it not also the fact that changes are also frequently caused by acce-tion, in the valley?

A. Yes, sir.

Q. 355. And that here in El Paso the United States is claiming, and still claims that the river changed, just a short distance below

San Antonio Street, to the position which it now occupies, by accretion? For a distance of about two miles?

Mr. W. W. Turney. Not two miles: You don't mean that, Mr. Hardie.

Mr. Thornton Hardie: Well, approximately a mile, or a mile and a half.

Mr. W. W. Turney: You know where the river of 1860 was, compared with the present rivers?

Witness: Oh, well, from San Antonio Street down to Seventh Street, I should judge it is, approximately, a mile; somewhere along about that; to the present river bed.

Q. 356. And, in your experience in surveying this river, and in the trial of land suits up in this valley, and below El Paso, you frequently happen upon the fact that the river changed by accretion?

A. Yes, I know that.

Q. 357. Is there any material difference in the formation of the valley, above El Paso and below El Paso?

A. Well, it is practically the same. Same sandy soil. Some places harder and some places firmer. Some places it is harder than in others. But the general soil of the valley is about the same.

I did not make any answer to what you asked me about the changes right here in town, in El Paso.

[fol. 81] Q. 358. Well, those changes—you do not know what caused them? Whether they were caused by avulsion, or what it was?

A. No.

Q. 359. You do not know that that is the contention of the United States, that the changes were caused by accretion?

A. Yes, sir.

Mr. Thornton Hardie: I want to offer in evidence these two deeds, from the Santa Teresa Land Company to L. M. Crawford, Trustee.

Mr. W. W. Turney: For what purpose?

Mr. Thornton Hardie: Because, for one reason, they show a survey made by the County Surveyor, or by his order or under his direction, of the land of L. M. Crawford, and those field notes call for the same river—the old river bed of 1905 as called for in this suit. We offer them for all legitimate purposes.

Mr. W. W. Turney: We will object to these deeds, or to any deeds, or any survey of the County Surveyor of El Paso County, as having no bearing on this case. Besides, this inquiry on the part of the plaintiff is limited to the testimony of the witness R. J. Owen.

Mr. Thornton Hardie: And we offer these deeds for the purpose of explaining Mr. Owen's testimony.

Mr. W. W. Turney: He has explained his testimony; and the order of the court is well understood, as made by the Supreme Court, that the plaintiff could take the testimony of R. J. Owen, and that the defendant could cross-examine R. J. Owen. That is the extent of the order for this hearing, and for this testimony. That is not explaining R. J. Owen's testimony. He has explained R. J. Owen. [fol. 82] He is on the stand, and he has explained what he has in

his mind about everything. And we object to the introduction of the deeds.

Mr. Thornton Hardie: And we offer them for the purpose of assisting in explaining his testimony; and for the purpose of explaining issues raised in your cross-examination.

The deeds referred to were then marked as "Plaintiff's Exhibits No. 282 and No. 283, W. E. Baker, Referee." The original deeds are to be returned to counsel presenting them. They are in the words and figures following:

"Plaintiff's Exhibit No. 282. W. E. Baker, Referee"

"Warranty Deed

This indenture, made this twenty-seventh day of February, in the year of our Lord one thousand nine hundred and eleven, between the Santa Teresa Land Company, a corporation duly organized and incorporated under the laws of the Territory of New Mexico, party of the first part, and L. M. Crawford, Trustee, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of Five Thousand Nine Hundred Twenty-three and 08/100 Dollars ($5,923.08), to it in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, and the further sum of Eleven Thousand Eight Hundred Forty-six and 12/100 Dollars ($11,846.12), as evidenced by four (4) certain promissory notes, of even date herewith, for the sum of Two Thousand Nine Hundred Sixty-one and 53/100 Dollars ($2,961.53) each, payable on or before one (1) year, two (2) years, three (3) years and four (4) years after the date thereof, with in-
[fol. 83] terest thereon from date until paid at the rate of eight per cent. (8%) per annum, interest payable — annually, said notes being signed by L. M. Crawford, Trustee, and payable to the Santa Teresa Land Company, or its order, at the Rio Grande Valley Bank & Trust Company in El Paso, Texas, and containing the usual provision for reasonable attorney's fees in the event the notes are placed in the hands of an attorney for collection after maturity; said notes being secured by a Vendor's Lien on the property hereinafter described;

Have granted, bargained, sold, remised, conveyed, released and confirmed, and by these presents does grant, bargain, sell, remise, convey, release and confirm, unto the said party of the second part, his heirs and assigns forever, all the following described lot or parcel of land and real estate, situate, lying and being in the County of Dona Ana, and Territory of New Mexico, to-wit: Being Four Hundred Forty-four and 23/100 (444.23) acres of land, as per survey of J. W. Eubank, County Surveyor of El Paso County, Texas, made in the month of February, A. D. 1911, as per the following field notes:

Valley Land Survey #4

Station	
0	Beginning at Sta. 0 of this survey, and Sta. #70 of V. L. S. #1, a point on the N. bank of the old bed of the Rio Grande.
1	E. 3185.0 ft.
2	S. 16° 08′ E. 7326.0 ft. to a point on the N. line of V. L. S. #2.
3	N. 88° 14′ W. 343.0 ft. Sta. #57 V. L. S. #2.
4	N. 82° 50′ W. 634.5 ft. " 58 " "
5	N. 73° 25′ W. 364.4 ft. " 59 " "
6	N. 78° 55′ W. 368.8 ft. " 60 " "
7	N. 88° 20′ W. 239.2 ft. " 61 " "

[fol. 84]

8	S. 86° 01′ W. 485.0 ft. Sta. #62 V. L. S. #2.
9	N. 65° 00′ W. 353.0 ft. " 63 " " and Sta. #5, connecting hill land Survey #1.
10	N. 36° 42′ W. 450.9 ft. Sta. #6 C. H. L. S. #1.
11	N. 34° 52′ W. 487.5 ft. " 7 " "
12	N. 22° 47′ W. 850.0 ft. " 8 " "
13	N. 55° 56′ W. 118.3 ft. " 9 " " And Sta. #47, Valley Land Survey #1.
14	N. 13° 44′ W. 226.3 ft. Sta. #48, V. L. S. #1.
15	N. 10° 07′ E. 456.2 ft. " 49 " "
16	N. 44° 26′ E. 522.5 ft. " 50 " "
17	N. 21° 56′ E. 224.4 ft. " 51 " "
18	N. 1° 53′ W. 365.0 ft. " 52 " "
19	N. 24° 12′ W. 420.6 ft. " 53 " "
20	N. 23° 06′ W. 441.8 ft. " 54 " "
21	N. 25° 46′ W. 312.0 ft. " 55 " "
22	N. 27° 16′ W. 495.2 ft. " 56 " "
23	N. 51° 23′ W. 300.4 ft. " 57 " "
24	S. 84° 12′ W. 183.5 ft. " 58 " "
25	S. 44° 27′ W. 467.7 ft. " 59 " "
26	S. 81° 25′ W. 182.5 ft. " 60 " "
27	N. 50° 38′ W. 580.6 ft. " 61 " "
28	N. 60° 56′ W. 630.5 ft. " 62 " "
29	N. 42° 18′ E. 335.2 ft. " 63 " "
30	N. 73° 14′ E. 728.3 ft. " 64 " "
31	N. 87° 50′ E. 161.0 ft. " 65 " "
32	N. 73° 43′ E. 663.8 ft. " 66 " "
33	N. 6° 00′ W. 217.0 ft. " 67 " "
34	N. 47° 03′ W. 522.9 ft. " 68 " "
35	N. 61° 14′ W. 252.4 ft. " 69 " "
36-0	N. 74° 16′ W. 467.6 ft. " 70 " "

to the place of beginning; and containing 444.23 acres of land.

[fol. 85] Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest,

claim and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with said hereditaments and appurtenances:

To have and to hold the said premises, above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said party of the first part, for itself, its representatives, successors and assigns, doth covenant and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, it is well seized of the premises above conveyed, of a good, sure, perfect and indefeasible estate of inheritence, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear of all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances of what kind and nature soever, and the above bargained premises, in the quiet and peaceable possession of the party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

But it is expressly agreed and stipulated that the Vendor's Lien is retained against the above described property, premises and improvements until the above described notes and all interest thereon are fully paid according to their face and tenor, effect and reading, when this Deed shall become absolute.

In witness whereof the said party of the first part has hereunto [fol. 86] set its hand and corporate seal, the day and year above written.

Santa Teresa Land Company, by W. H. Austin, President.

Attest: James L. Marr, Secretary. (Seal Santa Teresa Land Company, Las Cruces, N. M.)

THE STATE OF TEXAS,
County of El Paso:

On this the 4th day of March, 1911, before me appeared W. H. Austin, to me personally known, who, being by me duly sworn, did say that he is the President of the Santa Teresa Land Company, and that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, or Trustees, and said W. H. Austin acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and affixed my seal, at El Paso, Texas, on this the 4th day of March, 1911.

Sam B. Gillett, Notary Public in and for El Paso County, Texas. (Seal Notary Public, County of El Paso, Texas.)

(Endorsed on the back:) "No. 14022. Reception. Recorded. Compared. Indexed. Territory of New Mexico, County of Dona

Ana. Filed for record in my office this 3 day of April, 1911, at 11:30 o'clock A. M., and duly recorded in Book No. 39 of Deeds, page 507. Records of Dona Ana County, New Mexico. Isidoro Armijo, Probate Clerk and ex-Officio Recorder Dona Ana County, New Mexico, by J. F. Nevares, Deputy."

[fol. 87] "PLAINTIFF'S EXHIBIT No. 283. W. E. Baker, Referee"

"Warranty Deed

This indenture, made this twenty-seventh day of February, in the year of our Lord One Thousand Nine Hundred and Eleven, between the Santa Teresa Land Company, a corporation duly organized and incorporated under the laws of the Territory of New Mexico, party of the first part, and L. M. Crawford, Trustee, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of Twenty-seven Thousand Four Hundred and Ten and 28/100 Dollars ($27,410.28), to it in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, and the further sum of Fifty-four Thousand Eight Hundred and Twenty and 52/100 Dollars ($54,820.52) as evidenced by four (4) certain promissory notes, of even date herewith, for the sum of Thirteen Thousand Seven Hundred and Five and 13/100 Dollars ($13,705.13) each, payable on or before one (1) year, two (2) years, three (3) years and four (4) years after the date thereof, with interest thereon from date until paid at the rate of eight per cent (8%) per annum, interest payable annually, said notes being signed by L. M. Crawford, Trustee, and payable to the Santa Teresa Land Company, or its order, at the Rio Grande Valley Bank & Trust Company in El Paso, Texas, and containing the usual provision for reasonable attorney's fees in the event the notes are placed in the hands of an attorney for collection after maturity; said notes being secured by a Vendor's Lien on the property hereinafter described;

Have granted, bargained, sold, remised, conveyed, released and confirmed, and by these presents does grant, bargain, sell, remise, convey, release and confirm to the said party of the second part, his heirs and assigns, forever, all the following described lot or parcel of [fol. 88] land and real estate, situate, lying and being in the County of Dona Ana and Territory of New Mexico, to-wit:

Being Two Thousand and Fifty-five and 77/100 (2055.77) acres of land, as per survey of J. W. Eubank, County Surveyor of El Paso County, Texas, made in the month of January, A. D. 1911, as per the following field notes:

Valley Land Survey #1

Station	
0	Beginning at Sta. 0, of this survey, it being a point on the N. line of the Santa Teresa Grant, 899 ft. due E. of a S. T. Granite Rock marked ——— set for the N. W. Corner N. W. Cor., of the Santa Teresa Grant by W. V. Hall, Deputy U. S. Surveyor, in the United States Land Office survey of the Santa Teresa Grant in 1903.
1	S. 30° E. 6219.9 ft. crosses the foothills to a stake mkd. 6220 ft.
2	E. 1711.6 ft. across the foothills to a stake set at the edge of the foothills and under high bank on the edge of a bosque.
3	S. 2° 31′ W. 384.6 ft. follow high bank and edge of bosque.
4	S. 25° 07′ W. 216. ft " " " " " " "
5	S. 31° 40′ W. 185.2 ft. " " " " " " "
6	S. 6° 01′ E. 218.9 ft. " " " " " " " to a projecting point of hill land.
7	S. 20° 01′ W. 911.9 ft. follow high bank of big bend.
8	S. 9° 09′ E. 552.3 ft. " " " " " "
9	S. 49° 23′ E. 470.4 ft. " " " " " "
10	S. 77° 57′ E. 338.0 ft. " " " " " "
11	N. 61° 31′ E. 374.0 ft. stake on bank near E. point of big bend.
12	S. 57° 20′ E. 300.0 ft. crossing neck of bench land to W. bank of old river bed.
13	S. 5° 16′ W. 1109.0 ft. follow W. bank of old river.
14	S. 64° 49′ E. 396.0 ft. " " " " " "

[fol. 89]

15	S. 23° 45′ E. 780.0 ft Follow W. bank of old river.
16	S. 29° 11′ W. 411.7 ft. " " " " " "
17	S. 6° 45′ E. 270.8 ft. Begin line of high bank.
18	S. 26° 04′ W. 220.3 ft. follow high bank.
19	S. 30° 35′ W. 276.9 ft " " "
20	S. 11° 09′ W. 761.5 ft. High sand point.
21	S. 40° 39′ W. 486.7 ft. Follow high sand bluff.
22	S. 30° 05′ W. 285.9 ft. " " " "
23	S. 10° 09′ W. 671.1 ft. " " " " At deep cut.
24	S. 71° 59′ E. 748.3 ft. " " " "
25	N. 89° 28′ E. 811.1 ft. End of " " "
26	S. 59° 40′ E. 731.1 ft. Follow low bank.
27	N. 89° 49′ E. 639.8 ft. " " "
28	N. 81° 03′ E. 293.6 ft. " " "
29	S. 32° 58′ E. 245.3 ft. " " "
30	S. 32° 58′ E. 432.5 ft. " " "
31	S. 55° 15′ E. 320.7 ft. " " " past jacal.
32	S. 44° 11′ E. 657.7 ft. " " " Edge of bench land.

Station

33 S. 5° 43′ W. 822.4 ft. Around bench land.
34 S. 27° 53′ E. 463.4 ft. " " "
35 S. 44° 04′ W. 786.0 ft. " " "
36 N. 85° 52′ E. 531.8 ft. " " "
37 N. 89° 42′ E. 335.4 ft. " " "
38 S. 65° 07′ E. 549.8 ft. " " "
39 S. 17° 57′ E. 318.6 ft. Along foot-hills.
40 S. 26° 11′ E. 386.3 ft. " " "
41 S. 36° 10′ E. 275.0 ft. Cross sand point.
42 S. 36° 10′ E. 310.0 ft. " " "
43 S. 75° 42′ E. 393.6 ft. " " " to bank.
44 N. 86° 57′ E. 284.0 ft. Follow bank.

[fol. 90]

45 S. 89° 48′ E. 323.8 ft. Follow bank.
46 S. 64° 31′ E. 347.5 ft. " "
47 S. 64° 31′ E. 190.1 ft " " to running slough.
48 N. 13° 44′ W. 226.3 ft. Meander W. bank running slough.
49 N. 10° 07′ E. 456.2 ft. " " " " "
50 N. 44° 26′ E. 522.5 ft. " " " " "
51 N. 21° 56′ E. 224.4 ft. " " " " "
52 N. 1° 53′ W. 365.0 ft. " " " " "
53 N. 24° 12′ W. 420.6 ft. " " " " "
54 N. 23° 06′ W. 441.8 ft. " " " " "
55 N. 25° 46′ W. 312.0 ft. " " " " "
56 N. 27° 16′ W. 495.2 ft. " " " " "
57 N. 51° 23′ W. 300.4 ft. " " " " "
58 S. 84° 12′ W. 183.5 ft. " " " " "
59 S. 44° 27′ W. 467.7 ft. Cross to E. " " " "
60 S. 81° 25′ W. 182.5 ft. Meander " " " "
61 N. 60° 38′ W. 580.6 ft. " " " " "
62 N. 60° 56′ W. 639.5 ft. " " " " "
63 N. 42° 18′ E. 335.2 ft. " " " " "
old river bed.
64 N. 73° 14′ E. 728.3 ft. " " " " "
65 N. 87° 50′ E. 161.0 ft. " " " " "
66 N. 73° 43′ E. 663.8 ft. " " " " "
67 N. 6° 00′ W. 217.0 ft. " " " " "
68 N. 47° 03′ W. 522.9 ft. " " " " "
69 N. 61° 14′ W. 252.4 ft. " " " " "
70 N. 74° 16′ W. 467.6 ft. " " " " "
71 N. 68° 39′ W. 100.5 ft. " " " " "
72 N. 77° 14′ W. 401.6 ft. " " " " "
73 S. 89° 56′ W. 401.3 ft. " " " " "
74 S. 80° 46′ W. 197.9 ft. " " " " "
75 S. 84° 25′ W. 157.9 ft. " " " " " to intersect W. line of Canutillo Grant, as surveyed by Randolph, 79.4 ft. N. 12° 25′ W. from the S. W. cor. of Grant.

[fol. 91]

Station

76 N. 12° 25′ W. 5257.5 ft. Follow Randolph notes of Canutillo Survey. Heavy Bosque.
77 N. 59° 25′ W. 2841.7 ft. " " " "
78 N. 12° 55′ W. 2166.7 ft. " " " "
79 N. 76° 05′ E. 1319.4 ft. " " " "
80 N. 4° 25′ W. 1805.6 ft. " " " "
81 N. 78° 25′ W. 2500.0 ft. " " " "
82 N. 9° 05′ E. 1323.9 ft. " " " " to fence and iron pipe in S. line of an acequia, and on the N. line of the Santa Teresa Grant, as located by W. V. Hall, in 1903, in the survey described in the beginning of these field notes.
83 W. 2922.0 ft. with the N. line of S. T. Grant. Cross slough to stake at edge of hill.
0 W. 1160.0 ft. Cross foot-hills to place of beginning of this survey.

Containing 1285.14 acres.

Hill Land Survey

Within Valley Land Survey No. 1 are 250 acres of land classed as hill land. Of this acreage 191.94 acres are described by a distinct and separate survey of "Hill Land." The remaining 58.06 acres are included within the metes and bounds of "Valley Land Survey" #1. Following are the field notes of the "Hill Land Survey" included within the metes and bounds of the "Valley Land Survey" #1:

Station

0 Beginning at Station 0 of this survey, it being also Sta. 0 of "Valley Land Survey" #1, as described in the field
[fol. 92] notes of that survey, 899 ft. due E. of the N. W. cor. of the Santa Teresa Grant,
1 S. 30° 00′ E. 6219.9 ft. Line of V. L. S. #1.
2 E. 1711.6 ft. Line of V. L. S. #1.
3 N. 35° 10′ E. 534.8 ft. On edge of bench land. Sta. 91 V. L. S.
4 N. 43° 43′ W. 1685.4 ft. Cross bench land. Sta. 90 V. L. S.
5 N. 49° 25′ W. 696.5 ft. High bank. Sta. 89 V. L. S.
6 N. 19° 21′ W. 690.8 ft. " " Sta. 88 V. L. S.
7 N. 41° 43′ W. 671.2 ft. " " Sta. 87 V. L. S.
8 N. 51° 51′ W. 497.7 ft. To fence corner. Sta. 86 V. L. S.
9 N. 37° 50′ W. 569.2 ft. Along fence. Sta. 85 V. L. S.
10 N. 43° 40′ W. 1390.6 ft. Cross slough. Sta. 84 V. L. S.
11 N. 15° 21′ E. 384.3 ft. Along hills. Sta. 83 V. L. S.
0–12 W. 1160.0 ft. With N. line S. T. Grant. Sta. 0, V. L. S. to place of beginning; and containing 191.94 acres of land.

Connecting Hill Land Survey #1

Between Valley Land Survey #1 and Valley Land Survey #2

Station

0 Beginning at Station 0 of this Survey, it being also Sta. 46 in "Valley Land Survey" #1, a stake on the bank of a slough.
1 S. 32° 01′ E. 257.0 ft. Parallel with slough, on high bluff.
2 S. 22° 48′ E. 852.4 ft. " " " " "
3 S. 34° 46′ E. 506.1 ft. " " " " "
4 S. 36° 22′ E. 494.4 ft. " " " " "
to low land. Also Sta. 0 of "Valley Land Survey" #2.
5 N. 38° 25′ E. 158.2 ft. Stake on bank of slough. Sta. 63 [fol. 93] V. L. S. #2.
6–9 Up W. bank of slough to Sta. 47, "Valley Land Survey" #1.
0 N. 64° 31′ W. 190.1 ft., Sta. 46, V. L S. #1.

This is a strip of hill land in which the area is not computed. It is intended to serve as a connection between "Valley Land Survey" # 1–2. It is approximately 150 ft. in width, but may be 200 ft. or 250 ft. in width at certain stations.

Valley Land Survey #2

Station

0 Beginning at Station 0 of this Survey, it being Sta. 4 of "Connecting Hill Land Survey" #1,
1 S. 56° 22′ E. 731.3 ft. Follow base of foot-hills.
2 S. 27° 53′ E. 314.0 ft. " " " "
3 S. 25° 07′ E. 384.9 ft. " " " "
4 S. 44° 10′ E. 579.0 ft. " " " "
5 S. 63° 50′ E. 484.8 ft. " " " "
6 N. 60° 25′ E. 174.6 ft. " " " "
7 N. 68° 40′ E. 239.2 ft. " " " "
8 N. 79° 16′ E. 283.4 ft. " " " "
9 S. 89° 28′ E. 227.5 ft. " " " "
10 S. 30° 00′ E. 109.4 ft. " " " "
11 S. 31° 24′ E. 379.8 ft. " " " "
12 S. 00° 24′ E. 329.4 ft. " " " "
13 S. 21° 01′ W. 108.8 ft. " " " "
14 S. 31° 23′ W. 233.7 ft. " " " "
15 S. 2° 45′ W. 182.5 ft. " " " "
16 S. 12° 04′ E. 227.7 ft. " " " "
17 S. 33° 39′ E. 140.0 ft. " " " "

[fol. 94]

18 S. 12° 35′ E. 293.7 ft. Follow base of foot-hills.
19 S. 11° 24′ E. 618.0 ft. " " " "
20 S. 51° 54′ E. 657.4 ft. " " " "
21 S. 32° 20′ E. 320.6 ft. " " " " past jacal.
22 S. 13° 51′ E. 261.5 ft. " " " "

Station			
23	S. 1° 37′ E.	250.3 ft.	Follow base of foot-hills.
24	S. 16° 40′ E.	236.0 ft.	" " " "
25	S. 25° 25′ E.	199.2 ft.	" " " "
26	S. 8° 48′ E.	272.3 ft.	" " " "
27	S. 17° 03′ E.	428.7 ft.	" " " "
28	S. 63° 55′ E.	214.4 ft.	" " " "
29	S. 69° 35′ E.	328.7 ft.	" " " " to W. bank of present Rio Grande.
30	N. 10° 55′ W.	1271.9 ft.	Up bed of present river to point of bosque on E. bank.
31	N. 23° 36′ E.	1205.0 ft.	Follow old river bed.
32	N. 22° 30′ W.	551.6 ft.	" " " "
33	S. 81° 30′ E.	121.6 ft.	To corner of White's fence.
34	N. 44° 15′ E.	428.2 ft.	Follow fence and road on edge of bosque.
35	N. 49° 26′ E.	397.5 ft.	" " " "
36	N. 54° 55′ E.	243.6 ft.	" " " "
37	N. 65° 12′ E.	184.8 ft.	" " " "
38	N. 86° 30′ E.	652.6 ft.	" " " "
39	S. 33° 59′ E.	259.3 ft.	" " " "
40	N. 86° 00′ E.	613.5 ft.	Leave fence and cross present river.
41	S. 23° 55′ E.	974.5 ft.	Follow W. bank of present river.
42	N. 87° 55′ E.	406.5 ft.	" " " "
43	N. 61° 28′ E.	551.2 ft.	" " " "
44	N. 45° 40′ E.	431.5 ft.	" " " "
45	N. 00° 10′ E.	2288.8 ft.	" " " "
46	N. 69° 33′ W.	409.0 ft.	" " " "
[fol. 95]			
47	N. 38° 22′ W.	238.6 ft.	Follow W. bank of present river, to intersection with old river bed.
48	N. 88° 55′ W.	702.1 ft.	Follow center of old river bed.
49	N. 74° 56′ W.	688.5 ft.	" " " "
50	S. 86° 41′ W.	725.7 ft.	" " " "
51	N. 71° 36′ W.	601.7 ft.	" " " "
52	N. 65° 33′ W.	952.1 ft.	" " " "
53	N. 61° 36′ W.	588.3 ft.	" " " "
54	S. 59° 16′ W.	400.0 ft.	" " " "
55	S. 48° 11′ W.	702.0 ft.	" " " "
56	S. 30° 59′ W.	302.7 ft.	" " " "
57	N. 88° 14′ W.	508.4 ft.	" " " "
58	N. 82° 50′ W.	634.5 ft.	" " " " to W. bank of slough.
59	N. 73° 25′ W.	364.4 ft.	Follow W. bank of slough.
60	N. 78° 55′ W.	369.8 ft.	" " "
61	N. 88° 20′ W.	239.2 ft.	" " "
62	S. 86° 01′ W.	485.0 ft.	" " "
63	N. 65° 00′ W.	353.0 ft.	" " "
0	S. 38° 25′ W.	158.2 ft.	To place of beginning of this Survey, and containing 535.75 acres.

Connecting Hill Land Survey #2

Between Valley Land Survey #2 and Valley Land Survey #3

Station

0 Beginning at Sta. 0 of this survey, it being Sta. 29 of "Valley Land Survey" #2, a stake on the E. bank of the present river,
1 S. 26° 52′ E. 708.4 ft. Follow bank of present river.
2 S. 36° 58′ E. 210.2 ft. " " "
3 S. 46° 35′ E. 401.0 ft. " " "
4 S. 50° 16′ E. 154.8 ft. Follow W. bank of present river.
[fol. 96]
5 S. 39° 44′ E. 629.6 ft. " " "
6 S. 43° 32′ E. 589.5 ft. " " "
7 S. 61° 18′ E. 442.0 ft. " " "
8 S. 76° 22′ E. 226.0 ft. " " "
9 N. 86° 47′ E. 293.0 ft. " " " to Sta. 0 Valley Land Survey #3.
10 S. 76° 32′ E. 385.5 ft. Sta. 1, Valley Land Survey #3.
11 Paralleling the bank of the present river and enclosing to
21 a strip of land 150 ft. wide to Sta. 28 of Valley Land Survey #2.
0 S. 69° 35′ E. 328.7 ft. To Sta. 29. Valley Land Survey #2, the place of beginning of this survey, and enclosing, together with the hill land, 5.7 acres of valley land.

This is a strip of hill-land, in which the hill-land area is not computed. It is intended to serve as a connection between "Valley Land Survey" #2 and "Valley Land Survey" #3. It is 150.0 ft. wide, and contains a computed area of 5.7 acres of valley land.

Valley Land Survey #3

Station

0 Beginning at Sta. O of this Survey, it being also Sta. 9 in Connecting Hill Land Survey #2. A stake on the W. bank of the present river.
1 S. 76° 32′ E. 385.5 ft. Sta. 10, Connecting H. L. S. #2.
2 S. 6° 03′ W. 226.0 ft. Follow hill line.
3 S. 2° 22′ E. 594.5 ft. " " " to jackal.
[fol. 97]
4 S. 39° 23′ E. 186.9 ft. Follow hill line. Pass jackal.
5 S. 19° 41′ E. 428.7 ft. " high sand bluff.
6 S. 62° 53′ E. 263.0 ft. " " " "
7 S. 22° 28′ E. 265.6 ft. " " " "
8 S. 47° 16′ E. 495.0 ft. " " " "
9 S. 84° 29′ E. 360.7 ft. " " " "
10 S. 40° 00′ E. 407.7 ft. " " " "
11 S. 28° 42′ E. 585.0 ft. " " " " to S. line S. T. G.

Station			
12	E.	864.6 ft.	With S. line S. T. Grant to Piedras Paradas on W. bank of the present river.
13	N. 45° 09′ W.	425.8 ft.	Follow W. bank present river.
14	N. 13° 54′ W.	200.3 ft.	" " "
15	N. 27° 01′ E.	897.2 ft.	" " "
16	N. 51° 33′ E.	1545.0 ft.	" " " to intersection Santa Teresa Grant line.
17	N. 8° 48′ E.	438.0 ft.	S. T. G. line; center old river.
18	N. 57° 38′ E.	1700.0 ft.	" " " " " to W. Bank of present river.
19	N. 20° 10′ W.	1567.0 ft.	Follow S. T. G. line and W. bank of present river.
20	S. 46° 55′ W.	598.5 ft.	Meander W. bank of present river
21	S. 47° 25′ W.	469.3 ft.	" " " "
22	S. 42° 58′ W.	394.5 ft.	" " " "
23	S. 52° 05′ W.	510.8 ft.	" " " "
24	S. 55° 55′ W.	490.9 ft.	" " " "
25	S. 65° 15′ W.	402.3 ft.	" " " "
26	S. 73° 27′ W.	607.8 ft.	" " " "
27	S. 78° 10′ W.	305.4 ft.	" " " "
28	S. 89° 34′ W.	1029.9 ft.	" " " "
[fol. 98]			
29	N. 83° 59′ W.	590.7 ft.	Meander W. bank of present river.
30	S. 84° 09′ W.	384.5 ft.	" " " "
0	S. 75° 33′ W.	240.7 ft.	" " " "

to point of beginning of this survey; and containing 229.18 acres of land.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsover, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with said hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said party of the first part, for itself, its representatives, successors and assigns doth covenant and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these present, it is well seized of the premises above conveyed, of a good, sure, perfect and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same, in manner and form aforesaid, and that the same are free and clear of all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind and nature soever; and the above bargained premises, in the quiet and peaceable possession of the party of the

second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, [fol. 99] the said party of the first part shall and will warrant and forever defend.

But it is expressly agreed and stipulated that the vendor's lien is retained against the above described property, premises and improvements until the above described notes and all interest thereon are fully paid according to their face and tenor, effect and reading, when this deed shall become absolute.

In witness whereof, the said party of the first part has hereunto set its hand and corporate seal, the day and year above written.

Santa Teresa Land Company, by W. H. Austin, President.

Attest: James L. Marr, Secretary. (Seal Santa Teresa Land Company, Las Cruces, N. M.)

THE STATE OF TEXAS,
County of El Paso:

On this, the 4th day of March, 1911, before me appeared W. H. Austin, to me personally known, who, being by me duly sworn did say that he is the president of the Santa Teresa Land Company, and that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, or Trustees, and the said W. H. Austin acknwledges said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and affixed my seal, at El Paso, Texas, on this the 4th day of March, 1911.

Sam B. Gillett, Notary Public in and for El Paso County, Texas. (Seal Notary Public, County of El Paso, Texas.)

[fol. 100] (Endorsed on the back:) "No. 14021. Reception. Recorded. Compared. Indexed. Territory of New Mexico, County of Dona Ana: Filed for record in my office this 3 day of April, 1911, at 11:30 o'clock A. M., and duly recorded in Book No. 39 of Deeds, page 500, Records of Dona Ana County, New Mexico. Isidoro Armijo, Probate Clerk and ex-Officio Recorder, Dona Ana County, New Mexico, by J. F. Nevares, Deputy."

Q. 360. Now, Mr. Owen, I have here a little sketch, which I wish that you would examine. (Handing sketch to witness). You did not prepare that sketch, did you?

A. No, sir.

Q. 361. This is a sketch showing certain lines near the Canutillo Grant. Now, Mr. Owen, I will ask you to compare this sketch with the map of J. L. Campbell, and with the map which you perpared,

and ascertain if this map which I am now speaking of, which is a new map, is practically the same as these other maps, with regard to the line claimed by Texas.

(The map shown witness is marked "No. 173, El Canutillo Grant, 1860.")

Mr. W. W. Turney: We will object to the introduction of any new or additional maps, into the record, because the introduction of such maps and new evidence is not authorized by the order of the Supreme Court authorizing this examination of the witness Mr. Owen.

Mr. Thornton Hardie: We are offering it, and using it in con-
[fol. 101] nection with the examination of Mr. Owen.

A. It appears to be.

Q. 362. Now, Mr. J. L. Campbell, on this map, which is Defendant's Exhibit No. 62, has shown here a line to represent the southern boundary line of Surveys 259, 260, 261 and 262; and he also has shown on this map a line which is supposed to represent the position occupied by the river of 1852, across these same surveys. In your map, Defendant's Exhibit No. 65, you have shown the boundaries of the foothills along the valley, in that same section of county, along that same survey. Mr. Cambell has taken, as his southeast corner of Survey 259, a point on the west side of Survey 157, at a place which he designates as "B." Now, if you take Mr. Campbell's map in connection with your map Defendant's Exhibit No. 65, showing the position of the border hill land, and if you take a position for Campbell's point "B" at a point where Campbell's River of 1852 crosses the east line of Survey 259, and then construct the other surveys as Campbell has constructed them, only with that change of moving the point "B" up to a point where the 1852 river strikes Survey 259, would you have approximately the relative positions for the River of 1852, the south boundary line of those four surveys and the foot-hills as is shown on this new map that I am now showing to you?

A. If such a thing was done, why it appears that you would obtain the result that is shown on this little map or tracing.

Q. 363. If that theory was followed with reference to that survey, [fol. 102] the entire lines of your surveys there mentioned would be within the valley, would they not?

A. The Texas surveys, you mean?

Q. 364. Yes, sir.

A. Yes, sir; that is so.

Q. 365. Now, I believe, with reference to the surveys you made by yourself, and the showing of the position of these Texas surveys, you said that that is fully covered in your previous examination?

A. Yes, sir; I think it is.

The Plat bearing the legend "No. 173, El Canutillo Grant, 1860," was then marked as "Plaintiff's Exhibit No. 284, W. E. Baker, Referee," and is appended as a part of this record.

Q. 366. Now, Mr. Owen, please look at this map marked "No. 281," known as the Reclamation Service Map of the Mesilla Valley, showing the various known river channels——

Mr. W. W. Turney: Defendant objects to the introduction of the map called No. 281, by the plaintiff, on the ground that the inquiry at this hearing is limited to the testimony of R. J. Owen, and the order for the hearing does not provide for the introduction of any maps, plats or surveys on the part of the plaintiff; and, to permit the introduction of it, or any reference to it by the witness, would be outside of the scope of the order, and wholly without authority. For that reason, the defendant objects to the plat being used for any purpose in the case, and especially for reference by the witness R. J. Owen.

And we object for the further reason that the contents of the [fol. 103] map are not authenticated nor proven by anyone; and the lines or designations thereon, alleged to have been made by others are not authenticated nor proven, and especially certain references alleged to be shown thereon. There is no one here to establish the fact that the work was done under any authority; and, if there were, it would not be within the scope of the evidence authorized to be taken at this hearing, by the order of the Supreme Court.

Mr. Frank W. Clancy: I think that might be a good objection, unless it is possible that this map to which objection is made may explain or throw light on Mr. Owen's testimony. And, as to its being unauthenticated,—perhaps Mr. Owen can authenticate it from his own knowledge, as to the things shown thereon.

Q. 367. Mr. Owen, I will ask you to state if the line shown here on this map for the River which is designated "French Survey, 1903"—if these lines shown on this map of the United States Reclamation Service are approximately the same as the lines shown on the map, Plaintiff's Exhibit No. 21, introduced in evidence at the original hearing,—which is a copy of the French map?

A. These two exhibits appear to show this old river in the same position, in the same way, with the same and similar courses, and occupying about the same ground, yes, sir.

Q. 368. Now, the elevations shown on the Reclamation Service Map, prepared by that department,—are they ordinarily found to be correct, in your experience in surveying through the valley?

A. I can only speak of one instance where I found them to be [fol. 104] good: And that is of the lower valley, near the Hudspeth County line, over a territory of about ten thousand acres. I had all of the Reclamation Service field books in my valise over a period of about two months; and I found them, in that district, to be good.

Attorney General Keeling: We object to the testimony given, in regard to what the witness found to be the condition of other work of the Reclamation Department; and as to whether other work of the Reclamation Department is reliable; because it has no relation or bearing whatever as to whether or not the map offered in evidence is true and correct, nor as to its reliability. And we move to strike

out all of the testimony of the witness Owen, in regard to this map which has been offered in evidence, purporting to be a copy of that map of the Reclamation Department, on the further ground that if the witness' testimony identifies or authenticates any part of the map, makes it identical with the map already in evidence in the record, and would be a duplication of the record, and cannot be used for the purpose of bolstering up or supporting another map that is already in the record.

For these reasons, we move that the testimony of the witness Owen in regard to the Reclamation map, and the relation of the Reclamation Map to this Exhibit No. 284, be stricken from the record, as not being responsive to the order of the Supreme Court authorizing a re-examination of the witness Owen.

Mr. Thornton Hardie: I believe that we have offered all that we care to. We are through.

[fol. 105] Mr. Frank W. Clancy: One thing has occurred to me that might possibly fit in the record:

Questions by Mr. Frank W. Clancy:

Q. 369. Mr. Owen, I think you have testified, since we have been here this time, that since the completion of the dam at Elephant Butte, the effect of that was to control and prevent floods in this region that we are interested in.

A. Yes, sir; so far as regulating the flow of the river is concerned.

Q. 370. Well, I want to ask you if you can fix the time when that dam became effective for that purpose.

A. No, I did not fix that time. I did not remember that. But I think somebody offered that date; and I think it went in.

Q. 371. Can you give the date to us, approximately?

Mr. W. W. Turney: I think it was in 1912 that you stated, there.

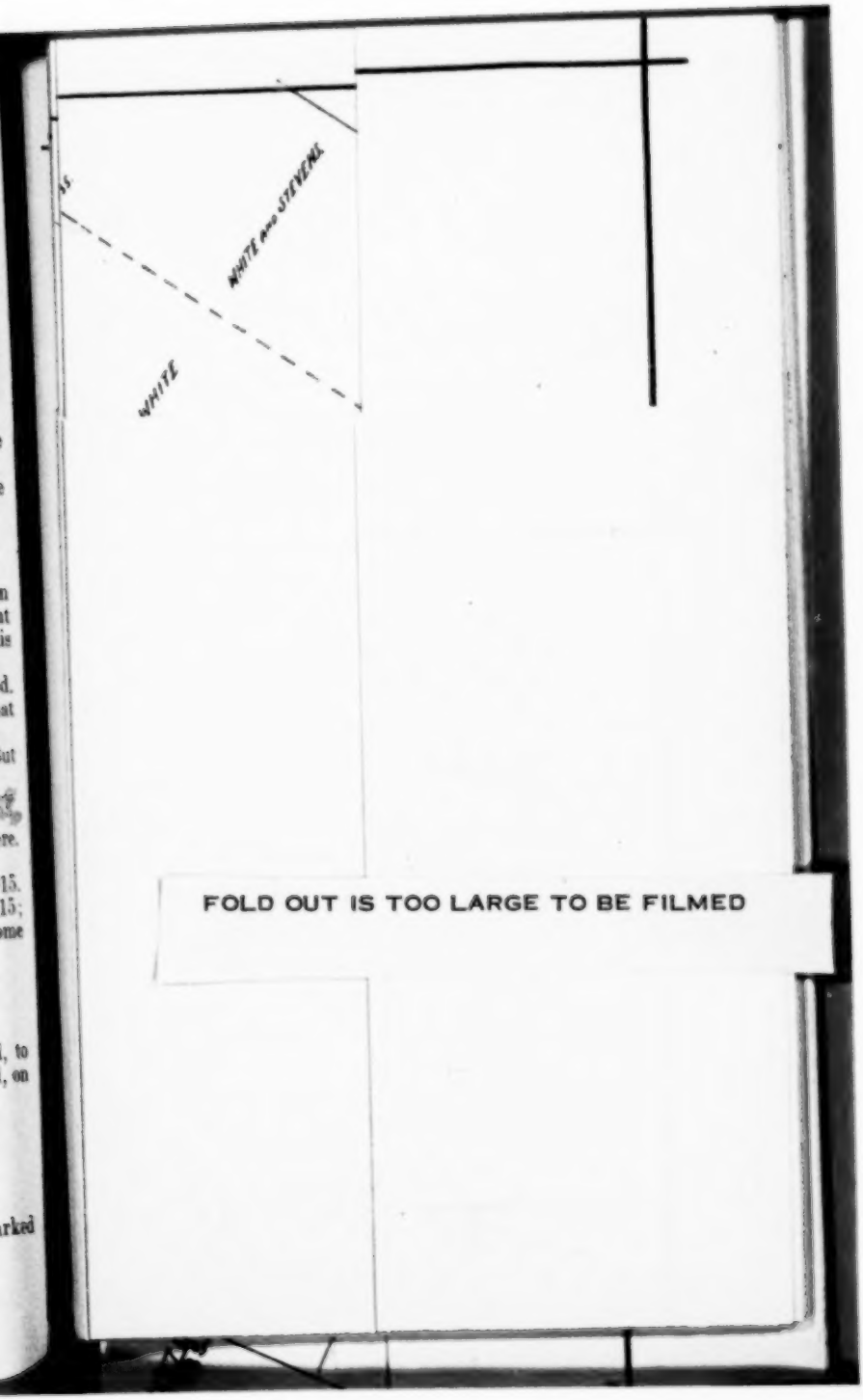
A. It is my recollection that it was about 1915. 1914 or 1915. I think they began to furnish stored water from the dam in 1915; and the dam would have been effective for flood control for some time before they began furnishing water.

Mr. Frank W. Clancy: That is all.

Mr. W. W. Turney: Nothing further at this time.

Thereupon the further hearing of this cause was adjourned, to be taken up at such time as may be agreed upon between counsel, on notice to the Referee.

(Here follow Plaintiff's Exhibits Nos. 280, 281, and 284, marked side folio pages 106, 107, and 108)



FOLD OUT IS TOO LARGE TO BE FILMED

[fol. 109] IN SUPREME COURT OF UNITED STATES

TESTIMONY OF HARRY A. KEZER

And be it further remembered that, pursuant to the order of this Court, made and entered of record on the 14th day of April, 1924, and pursuant to the adjournment taken herein on the 7th day of May, 1924, and to agreement of counsel, and notice given to the Examiner,

There met, at El Paso, Texas, at the office of Hon. W. W. Turney, of Counsel for the State of Texas, on Thursday, June 19, 1924, at 10:00 o'clock a. m.,

Hon. Frank W. Clancy, Special Counsel employed by the State Boundary Commission of New Mexico;

Thornton Hardie, Esq., of El Paso, Texas, appearing by consent as Special Counsel for New Mexico;

Hon. W. A. Keeling, Attorney General for the State of Texas;

Hon. W. W. Turney, of Counsel for the State of Texas;

W. E. Baker, Examiner;

And others:

Whereupon, the following proceedings were had:

[fol. 110] HENRY A. KEZER, called as a witness on behalf of the State of Texas, having been, by the Referee, first duly sworn according to law, to testify to the truth, the whole truth, and nothing but the truth, in the cause now pending, upon his said oath testified as follows, to-wit:

Direct examination.

By Honorable W. W. Turney:

Q. 1. Please state your name.

A. Henry A. Kezer.

Q. 2. Where do you live, Mr. Kezer?

A. I live in Dona Ana County, about four miles and a half from here,—in Dona Ana County, New Mexico.

Q. 3. How long have you resided at that place?

A. Since some time in August, 1900, I forget the exact day.

Q. 4. Prior to going to that place to live, where did you reside?

A. One year in El Paso, at No. 415 South Ochoa Street. Before that, from 1887, I lived at what is now called Vado, but was then called Herron's Switch,—Herron's Spur, and then afterwards called Earlham, in Dona Ana County, New Mexico. But I was away two years during that time, on account of my health; but I considered that my home.

Q. 5. When did you go to that place that you say is now called Vado?

A. On the fourteenth day of December, 1887.

Q. 6. And you lived there for how many years?

A. I lived there until March. 1898. But I was away from there two years, on account of my health.

Q. 7. What has been your business, Mr. Kezer?

[fol. 111] A. Why, farming and nursery business; and for a good many years I ran a flower store here in El Paso.

Q. 8. While running the flower store here in El Paso, where did you live?

A. From 1898 to 1900, I lived on South Ochoa Street; and after that I lived up here where I am now living, four and a half miles from here in Dona Ana County, New Mexico.

Q. 9. During the years you have mentioned, were you acquainted with the district at and adjacent to what is now the new Country Club?

A. Yes, sir.

Q. 10. How did you become acquainted with that district?

A. Well, the first that I went in there to look at it,—Mr. Z. T. White,—in 1899, I think it was, or it may have been the winter of 1900,—that I was down to the Gas Plant; and he was then the owner of it; and I was there to get some tar; and he sent a man out to tell me to wait. And he told me of a piece of land that we could get pretty cheap, and said that we could put in a ditch together. And I went up there and looked it over. And, from the experience and observation that I had had with the river, I made up my mind that it was only going to be a very few years until there was going to be a terrible flood and overflow in there. And so, I turned it down.

Q. 11. Where was that land?

A. Why, it was there where the Bell Pool is now. Right near there.

Q. 12. All right. At or about that time, did you have occasion [fol. 112] to go to about where the Country Club now is, and if so, for what purpose?

A. Why, at that time, I was all in through there, yes, looking at the river. That was the first time I went in there to look it over. I did, once, before Mr. White bought it.

Q. 13. Did you give the year in which that was?

A. Yes, I think that was in 1889—no, I mean 1899.

Q. 14. 1899?

A. I think it was in either 1898 or 1899.

Q. 15. For what purpose did you go in there at later times?

A. Since then, you mean?

Q. 16. Yes, sir.

A. Why, I was gathering mistletoe. I got permission from Mr. White to gather mistletoe up there. I was shipping a good deal of mistletoe to Chicago and to different other places.

Q. 17. During how many years did you ship mistletoe?

A. Why, we shipped, in 1899, and 1900, and on up until about 1910, or 1911; I am not sure just which year we quit.

Q. 18. Did you ship continuously?

A. Yes, sir; every winter. We would commence shipping about the 28th of November, generally, and ship on up until about the

10th of December. They had to have it, you know, in time for Christmas decorations.

Q. 19. Did you personally supervise the gathering of the mistletoe?

A. Yes, sir.

Q. 20. During those years, did you have occasion to go to the [fol. 113] vicinity of where the new Country Club now is?

A. Yes, sir; every year I was in there. Generally we had different parties in there. In there where the Country Club now is, for two years, in about 1893 and 1894, we gathered mistletoe.

Q. 21. From what kind of trees, in the vicinity of where the Country Club now is, did you gather mistletoe?

A. Cottonwood trees.

Q. 22. State whether or not there was any forest of trees in that vicinity.

A. Why, it was a regular bosque. A bosque is not like what you would call a pine forest, but it was brushy, and lots of cottonwood trees in there.

Q. 23. Were the trees numerous, or otherwise?

A. Oh, yes, sir, there was lots of them. It turned out a good amount of cottonwood.

Q. 24. Do you know of anyone that was cutting wood at that place?

A. Why, Mr. White—or, Mr. Miller was the man, as I understood it. I understood he was working for Mr. White. And no one ever made any objection, and I went through there and gathered the mistletoe.

Q. 25. Nobody objected to your gathering the mistletoe?

A. No, sir.

Q. 26. You gathered it where it grew best?

A. Yes, sir.

Q. 27. What age and size of trees did you gather the mistletoe from?

[fol. 114] A. Why, it is always old trees that it grows on. Young, thrifty trees don't have it.

Q. 28. Can you say anything about the age of the trees that grow mistletoe best?

A. Oh, from fifteen to twenty-five years old, I expect.

Q. 29. What other growth, besides cottonwoods, was therein that vicinity? In there where the Country Club now is, and immediately west of it?

A. There were a very few willows; but it was mostly Tornillo and cottonwood—large trees.

Q. 30. How large were the tornillo trees?

A. Oh, big old fellows.

Q. 31. Do you know anything about the age of the tornillos?

A. No, I don't think I ever counted the rings on the tornillos, so that I could get an estimate of about how old they would be. Not on the tornillos; but I have on some other trees.

Q. 32. Have you had occasion, recently, to go into that district we have just been talking about?

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A. Yes, sir; I went up there to look over the land. I did not know where the Bell Pool was, until I went over there about a month ago. I had heard about the place, but I did not know exactly where is was. So I went over there to see where it was, so that I could talk intelligently about it.

Q. 33. Mr. Kezer, this is the plaintiff's Exhibit No. 280, which is a map, upon which this particular investigation is being made. This spot here (indicating to the witness, on the map) represents the present Country Club.

[fol. 115] A. Yes, sir.

Q. 34. This road is called the Country Club road, coming from the east, and crossing the railroad track, from the paved road, and going to the north of the Country Club buildings, and passing the Bell Pool, northwesterly. Do you know that road?

A. Yes, sir. In 1904, we hauled our mistletoe out, pretty nearly the way that that road runs now. Of course. it was crooked then, but it was the same general course as that road is now. In 1904 we got our mistletoe right out in here (indicating on the map).

Q. 35. That was close to where the Bell Pool is now?

A. Well, yes, sir; and it ran up north, there, but there was a big tract. The main river was right about here, and about in here, there was a slough. There was a slough a little to the east of where the Bell Pool is now, but the main river was around on the west side of this big tract of land that they were gathering the wood from. That was in 1904. We got through there, about the 10th or 12th of December, that year.

Q. 36. Now then, this, as I said, is the Country Club site (indicating on the map).

A. Yes, sir.

Q. 37. Now, state whether or not the forest that you described a while ago was in any part of his horn, we will call it, that goes [fol. 116] around the Country Club, as shown on plaintiff's exhibit No. 280.

A. We did not gather any mistletoe in here, to amount to anything, then. But after that we did gather mistletoe in here (indicating on the map).

Q. 38. I am not talking about any particular year.

A. Excuse me, I didn't quite understand your question.

Q. 39. During the years that you gathered mistletoe up there, did you gather it within the forest that was then within the horn created by the curve that goes around the Country Club, as represented on this map, plaintiff's exhibit No. 280?

A. Yes, sir.

Q. 40. Show me, on this map, about where those trees were, with reference to the survey lines of surveys No. 156 and No. 157.

A. Well, we got some of it in survey No. 156 and some of it in survey No. 157—in 1902 and in 1903. And, in 1905, we come down on the east side of the river, I think. We did not cross the river, much, that year. And then we got it on further south from that point.

Q. 41. Now, what was the extent of the forest, or trees, that you have just described, in the territory within this circle, then—this circle that goes around the Country Club?

A. Why, there were lots of old trees all in through there.

Q. 42. On what surveys of land?

A. On surveys No. 156 and No. 157.

[fol. 117] Q. 43. How large would you say the largest of those cottonwood trees were?

A. Oh, they were along about eighteen inches through, and there were some of them a good deal bigger than that, but they would average around eighteen inches through, I think.

Q. 44. And what height would they be?

A. Well, while they grew thick they were very high. Of course, where you found a tree out by itself, it would be branched out and would not be so high.

Q. 45. When did you last get mistletoe, anywhere within this circle that I have decribed as a horn, that carries a yellow line with it, on this map, around the place where the Country Club now is?

A. Along in 1904.

Q. 46. Do you know when that district was cleared, finally, for farming?

A. Why, Mr. White cleared some, along in about 1916. Noel Longuemare and I had the contract, and cleared the land right in here (indicating on the map), in August, 1916; and he was looking after the Mexicans mostly. And I came up, one day, and they were taking out some stumps there,—digging them out; and I says to him: "That is going to cost us too much. We will just take some of this brush and pile it on there, and burn those out." And we burned one out there, that I remember, that went down for about six feet.

Q. 47. How large was that stump that you burned out?

A. That was about two feet in diameter.

Q. 48. You mean that that was within survey No. 157?

[fol. 118] A. Yes, sir.

Q. 49. And within this curvature of the river, as shown on this plaintiff's map—this pleading map?

A. Yes, sir.

Q. 50. Could you state, with any degree of certainty, the number of those trees of the size you have mentioned, that you found within this circle, in surveys No. 156 and No. 157?

A. Oh, there were hundreds of them. There was one hundred and sixty acres of them there.

Q. 51. How long did those trees continue to stand there?

A. Well, we grubbed them out; and we got, I think, nearly two-thirds through with them, when there was an injunction served on us, that stopped us.

Hon. W. W. Turney: You may have the witness.

Cross-examination.

Questions by Thornton Hardie, Esq.:

Q. 52. Mr. Kezer, I believe you stated that you first went into this section of the country in 1899 or 1900, in the district around where the Country Club now is?

A. Yes, sir, that was the time I went there most. I had been there once before—five or six years before that.

Q. 53. But you do not have any particular recollection of what you saw that previous time?

A. No. But the time that I went in there to see about the land, I remember that distinctly.

Q. 54. Where were you shipping mistletoe from?

[fol. 119] A. Why, we were hauling loads of it to El Paso, although we had permission to ship from what was known as White's Spur, and we put on our big shipments there.

Q. 55. What time did you say you usually shipped mistletoe?

A. Why, along about the first of December. We usually began along about the 28th of November, and shipped all along until the 10th or 12th of December. We shipped to wholesale houses, you know, and they had to have it in time for Christmas decorations.

Q. 56. Did the river have any water in it, at that time?

A. Most generally, yes, sir; all through the winter time. And in 1904 the river come up pretty high at that time.

Q. 57. Now, Mr. White owned a good deal of land on this side of the river, did he not?

A. As the river ran then. Now, that is hearsay. I got my permission from him, and his men were cutting wood there, that was my evidence.

Q. 58. That was on the east side of the river, as it then ran?

A. Yes, sir; as it then ran. So far as I know, they did not cross the river as it was, then, in cutting the wood.

Q. 59. Now, when you were there, gathering mistletoe, in that section, there was a world of cottonwood trees with mistletoe on them, all through that section, was there not?

A. Oh, yes, worlds of them.

Q. 60. And there were worlds of cottonwood trees with mistletoe on them, on the east side of the river?

A. Yes, sir.

Q. 61. And you did not have to cross the river to gather the mistletoe?

A. No, sir.

[fol. 120] Q. 62. You, of course, hauled the mistletoe in wagons in those days?

A. Yes, sir; we hauled it in wagons, in crates two feet by two feet by four feet, of course.

Q. 63. Now, practically all of the mistletoe that you gathered up there, was gathered from this side of the river—the east side of the river, was it not?

A. The river proper—I did not cross it at any time. We were

in there where they were cutting the trees. We did not have the time to cross the river.

Q. 64. And there was no time that you crossed the main channel of the river, to get mistletoe?

A. No. So far as I know, we did not cross it. And they did not cross it.

Q. 65. To cut wood, that is?

A. Yes, sir.

Q. 66. Now, the river, at that time, had several big bends in there, before it changed?

A. Yes, sir.

Q. 67. And other places, in there, it cut back and hit the foothills?

A. Yes, sir.

Q. 68. And then it would come out from the foothills into the valley again?

A. Yes, sir.

Q. 69. And there were several of those big bends in there?

A. Yes, sir.

Q. 70. Are you familiar with how the river was running up in there, in 1905?

A. Yes, sir.

[fol. 121] Q. 71. The river had been running in practically the same position, ever since you knew it, in there?

A. Oh, no. No indeed.

Q. 72. I mean, practically the same?

A. No indeed.

Q. 73. Mr. Kezer, you said that the river was making bends: Looking at this map, plaintiff's exhibit No. 280—this is the southeast corner of the Canutillo Grant. This is Mr. Crawford's house, where Mr. Trousdale lives (indicating on the map).

A. Yes, sir.

Q. 74. Now, beginning at the southwest corner of the Canutillo Grant, you see a yellow line on this map, do you not?

A. Yes, sir.

Q. 75. Now, in 1905, was the river running approximately in the course as shown here on this map?

A. Let me locate the Santa Fe Railway track, and I can tell you. Let me get your question once again.

Q. 76. Now, in 1905, when you say you were in this territory up here, was the river running about at the southwest corner of the Canutillo Grant? This is the southwest corner of the Canutillo Grant, on this map (indicating on the map).

A. In 1905, I was not up there. We will suppose that the Montoya Switch is right about where that mark is. (Indicating the circle on the arrow on the map that indicates the direction of the compass). Well, in 1905, the river cut in here, and swung out here so close [fol. 122] that you could see it from the switch at Montoya. It had cut off the water system that Mr. Miller and Mr. White had put in for irrigating the alfalfa, down below there. Mr. White had a great deal of alfalfa planted in there, in survey No. 156 and in survey No. 157, down in the lower part.

Q. 77. All in the lower part of it?

A. No, not in survey No. 156. It went away down here, though, (indicating on the map). I should say that he had several hundred acres in there.

Q. 78. Now, this time that you speak of the river cutting over in here, near the Montoya Switch——

A. In 1904, it cut across here. And it cut across here in 1905 (indicating on the map).

Q. 79. Now, before 1904, or 1905, when the river came around close to Montoya, it had been running over on the west side of the valley, had it not?

A. No, but it was very crooked—when Mr. White took out his ditch up here, on the Abraham place, I think it would be—on the Canutillo Grant. When Mr. White took that ditch out, it was taken out through an old bank there, and he brought it on down, and it ran by gravity, first; and then the river kept on cutting down, and cutting down; and it cut in there mostly before 1905.

Q. 80. Now, Mr. Kezer, before 1905, before the river made the change, wasn't it running—before it made the cut to Montoya—over at the southwest corner of the Canutillo Grant?

A. In 1905?

[fol. 123] Q. 81. 1905, and prior thereto?

A. Well, when the water was high, it ran in there; but it continued to cut in.

Q. 82. Have you ever been at the southwest corner of the Canutilo Grant, near Mr. Crawford's house?

A. Oh, yes, sir; I have been there, long before Mr. Crawford's house was there, and I have been there since.

Q. 83. Well, long before 1904, the river was running right in there, in that section, was it not?

A. Yes, it must have been.

Q. 84. Now, it had been running there for a good many years, hadn't it—ever since you knew it?

A. No, sir, I do not know whether I am getting out of latitude in this, or not. If not, I will go back to 1898, when it broke over and made this first arroya near Canutillo. The Santa Fe Railroad was afraid to undertake to change it, and made arrangements with old man Moss, and put in a switch there, and hauled rock in there; and he was to throw the rock in there and dam it up. That was in 1889, the next year after we came to the country.

Q. 85. Well, at the time that you came to the country, it was running out near Mr. Crawford's house, was it not?

A. Well, I don't know.

Q. 86. Well, the first time you ever went in there, it was running over near Mr. Crawford's house, and then cutting up near the Canutillo Grant, was it not?

A. Well, he throwed it in there. It went over pretty close to where it is, and then it went on in there, about the Canutillo Grant.

[fol. 124] Q. 87. And it came down about where this yellow line is (indicating on the map)?

A. No, it didn't swing in there; but it came on over here (indicating on map).

Q. 88. How far east?

A. Well, over in sight from the Montoya Switch.

Q. 89. Hoy close did it come to the Montoya Switch?

A. Oh, I believe it was within five hundred feet. It was pretty close. A man standing on the track couldn't see much over five hundred feet.

Q. 90. In 1905, the river was running about where Mr. Crawford's place is, and the Canutillo Grant, travelling along towards the southwest corner of the Canutillo Grant, and to within five hundred feet of the Montoya Switch, in the general course shown by this line, was it or was it not (indicating on map)?

A. No, not as straight as that. It ran across surveys No. 261 and No. 260; it went clear across them.

Q. 91. How long did it run in that position?

A. Why, it swung in here towards the Canutillo switch in 1904, during that high overflow. It must have swung in there nearly a thousand feet, during that overflow.

Q. 92. Well, when it swung in there, in 1904, it made a change away up the valley and came along down by the Santa Fe track, didn't it?

A. No, not then.

Q. 93. Well, before it made this change that you say was made, and ran over to the Montoya switch, it was running about where this [fol. 125] yellow line is, through this survey No. 261, was it not?

A. No, it was not running that way.

Q. 94. Well, where was it running?

A. It was keeping off across surveys Nos. 261 and 260, over here (indicating on map).

Q. 95. How far, about, did it come, east?

A. Well, I don't know what the survey is, coming over here towards the switch. If it did, I could tell you.

Q. 96. I am talking now about before it made the change.

A. Well, for several years it was running in an easterly direction, and cutting across.

Q. 97. From the foothills?

A. Yes, sir; from the Canutillo Grant—if Abraham's place is up in here (indicating on map). It ate up into the Canutillo Grant, quie a bit.

Q. 98. What I am getting at, is, the river, before it changed over there to the Canutillo Grant, was running out into the valley, in the Canutillo Grant a certain distance, and also made curves out into the valley?

A. It was making curves out easterly, and some north, too.

Q. 99. Well, after it made these curves, out into the Canutillo Grant, where did it go?

A. It came up in here, and came up over here (indicating on map), and was hitting the foothills right about a big arroya that comes down from the hills on the west side of the valley.

Q. 100. Now, after it hit the foothills on the west side of the valley, it then made another turn, did it not?

[fol. 126] A. Yes, sir.

Q. 101. And came back east, along about where the Bell Pool now is, and about the Country Club, did it not?

A. No, sir. It came in there, and came down about here. (Indicating on map). It was running, in 1904, partly on survey No. 261, and partly on the south part of the Canutillo Grant.

Q. 102. Mr. Kezer, this map here, that you have been shown, that Mr. Turney asked you about—you are not sufficiently familiar with this map, are you, to pick out the locations of the river?

A. I don't think I have ever seen this map before.

Q. 103. And you cannot pick out on this map the location of the river, there?

A. No, not unless the Bell Pool and the Country Club are on there. If the Canutillo switch—the Montoya switch—was shown on there, I could tell.

Q. 104. Now, in 1905, the river was running just south of the Bell pool, wasn't it?

A. No. In 1905 that cut out mostly away over here, west of the Bell Pool—south and west of the Bell Pool (indicating on map).

Q. 105. Now, in gathering that mistletoe that you spoke of, you did not cross the river, at all, did you?

A. No; we crossed the slough though. I know that, because one day we crossed the slough, and the water come up over the wagon-bed, and the Mexican thought we could not get through; and I had to get in and drive.

[fol. 127] Q. 126. But that was before the river had changed over to the other side of the valley?

A. No, that was in 1904. And it changed in June, 1905.

Q. 127. I thought you said that it changed in 1904, and went over towards White's Spur.

A. I cut in a great deal, over toward Montoya, for several years before; but in 1904 it cut in there, and cut over a great stretch.

Q. 128. You never did see this river, Mr. Kezer, run in a straight line along the foothills?

A. No, I never did. It would run straight for a little ways, and then curve, and then cut out this way, and then go that way (indicating on map).

Q. 129. It was always a crooked river?

A. Yes, sir.

Q. 130. It would strike the foothills for a while, and then bend out into the valley?

A. Yes, sir.

Q. 131. It has done that ever since you have known it, has it not?

A. Yes, sir; ever since I have known it. The nearest it came to running straight for any time, was the time that it come over near to Mesilla; and it ran straight, there for a mile or two.

Q. 132. But, in this particular territory we have been speaking about, it has been a curved and crooked river, all the time?

A. Yes, sir; changing every year or so.

Q. 133. Cutting in one year, and cutting out the next year?

[fol.128] A. Yes, sir, cutting in and cutting out. Some years it would cut one side, and the next year it would cut to the other.

Q. 134. Was there very much water in the river, at flood times?

A. Yes, sir, very much. I have seen it when it was from the Santa Fe Railroad tracks clear across to the west side of the valley. Whenever we would have those terrible overflows, it would make all sorts of changes and cuts.

Q. 135. The general course of the river would go back to the old channel, though, when it went down, wouldn't it?

A. No, I could not say that. It was like I said, here. (Indicating on map). It would cut from one side to another, and change in different places. Then, in 1907, in survey No. 155, it came almost over to the Santa Fe Railway track, again, and then it cut across and went away from it again, in 1911.

Q. 136. From 1902, or 1903, until about 1905, the river was running, in that section, during those three years, practically in the same place, was it not?

A. From 1902 to 1905? Oh, up to 1905.

Q. 137. Yes, sir.

A. Yes, sir, up to, but not including 1905.

Q. 138. I am speaking of up to 1905.

A. Yes, sir.

Q. 139. Up to 1905, it ran in practically the same course?

A. Well, it didn't make any of those big changes. It was cutting in and out, some, though, as I said, prior to 1904.

[fol. 129] Q. 140. Now, this map, plaintiff's exhibit No. 21, known as the French survey, which was introduced in evidence on February 14, 1914—now, on this map, is shown a river bed, here (indicating on the map), marked "Rio Grande," coming down from the west of Anthony, pretty much on the west side of the valley; and here, at the southwest corner of the Canutillo Grant, and west of the southwest corner of the Canutillo Grant, it strikes the foothills, and then turns east, for quite a distance, making curves, and then comes back on a short curve, and then out to the east, again, and then to the southeast, and then back again to the foothills; and then comes out again towards the east, passing almost across the valley, and almost to the old border that is shown there, that Mr. White had built to stop the river. Now, this river came almost across to the Santa Fe Railroad—nearly to that old border; and then it made another curve, back almost to the Santa Teresa Bluff, and then back into the valley again and nearly to the Santa Fe Railroad; and then back again into the valley; and then nearly to the railroad again?

A. Yes, sir. Now, where is the Country Club?

Q. 141. The Country Club is right inside of this point, which is near this border (here indicating on the map).

A. The river come in below and south of the Country Club, where it now stands. I recollect the river making that bend, but it was south of where the Country Club is now.

[fol. 130] Q. 142. Now, this map of Mr. Owen's, plaintiff's exhibit No. 280, shows the river of 1905 coming out west of here, and down to the Country Club, and then south of the Country Club, right

over here (indicating on the map). You have been up there recently have you not?

A. Oh, yes, sir.

Q. 143. Have you seen that old river bed there?

A. Yes, sir; and it was there before it cut down in through here (indicating on the map).

Q. 144. From what direction?

A. From just about north. It cut down there, first, in 1905. There was an old river bed down there, that cut into Mr. White's alfalfa, that was south of where the Country Club now stands.

Q. 145. Now, let me ask you, Mr. Kezer, the cottonwood trees that you got the mistletoe from—they were, in any event, to the north and the east of the river shown on this map?

A. No; they were north of it. You said the Bell Pool was in here (indicating on map). That would throw the Country Club over here (indicating on map).

Q. 146. Let us forget the Bell Pool for a moment. We have a map here, made by Mr. French, in 1903, which shows here, a point which I will mark "A," with the river running to the north and to the east and the south of "A." Now, if the river was actually running where it is shown here, in 1903, then where was it that you got the mistletoe, at that time?

A. It was right in north of where that river made that bend.

[fol. 131] Q. 147. It was, then, right about here, where we will mark "B"?

A. Yes, sir; right in there, and that is where the Country Club now is.

Q. 148. Now then, I will ask you if you ever got any mistletoe on the place where "A" is marked?

Attorney General Keeling. Is there any sure way to identify that? This particular document that you have there, Mr. Hardie, is not in evidence.

A. Where is White's Spur, with reference to this bend?

Q. 149. Right here, near this place marked "Border."

A. Then White's Spur was a long way from that point—a good deal.

Q. 150. Here is White's Spur, marked on here (indicating on the map).

A. The Country Club is right west of that. That point is what I have been trying to talk about, as coming in south of the Country Club.

Q. 151. Let's forget that, and take this map of French, showing the river of 1903, and showing that bend where we have marked the letter "A," here, a place where it shows an old border line. Now, I will ask you this: You say you got the mistletoe from about the position of "B," just north of the old river of 1903. Is that right?

A. Yes, sir.

Q. 152. Now then, you did not go south of that river of 1903, did you?

A. In 1904, I did not. But, I think in 1905—I think I got a lot [fol. 132] of mistletoe down here on this old river bed. Then the river was running in here.

Attorney General Keeling: What direction from the Country Club, and how close to where it is now?

Witness: South and west of the Country Club; a mile and a half, I should say. A little south of west.

Q. 153. Now, Mr. Kezer, this river of 1903,—how was it running?

A. That is just exactly according to my recollection (pointing to the map), only in there you have got White's Spur marked in here (indicating on map).

Q. 154. Here is White's Spur, on this map. If you come directly west of that, to the point "C," that is your idea of where White's Spur was?

A. Yes, sir.

Q. 155. Now, when you testified about getting mistletoe, and seeing those old trees, and the cutting down of the old trees, that was at about the place marked "B." Is that right?

A. Yes, sir.

Q. 156. Then, it was north of what is shown here as the river?

A. Yes, sir.

Q. 157. Now, south of what is shown here as the river—did you do any work in there?

A. No; they were not working in there,—not doing any cutting.

Q. 158. Do you know anything about the condition of the land there—over there—(indicating on map)? What kind of growth there was there, if any?

A. Oh, cottonwoods and willows, and so on. Out in here (indi- [fol. 133] cating on map) there was a sand bar—about this place where the "A" is, and on the west side of that bend.

Q. 159. When you spoke of the big cottonwood trees, at the west end of the bend of 1903, that would be about the position of this letter "D," on here—on this map, would it not?

A. Yes, sir.

Q. 160. At least, that is an approximation of it, is it not?

A. Yes, sir.

Q. 161. And you are talking about the west end of that bend?

A. Yes, sir.

Q. 162. Now, that is the place where you say the cottonwood trees were, south of the river, at that time?

A. Yes, sir.

Q. 163. East of that point "D," you did not notice any big cottonwood trees, did you?

A. No, sir. There was a wide sand bar there; and the river had been cutting in there, you know.

Q. 164. Then, from "D" to "A" there was no large cottonwood trees, but it showed the condition of having recently been cut out by a change of position of the river?

A. Yes, sir.

Q. 165. And leaving a sand bar to the east?

A. Yes, sir.

Q. 166. And it had grown up, first, with some cottonwoods and then willows?

A. Yes, sir.

Q. 167. Now, when you cut this wood, up there——

A. I didn't cut any wood.

[fol. 134] Q. 168. Well, when you saw the big trees being cut, that was to the north of what was then the river, was it not?

A. Yes, sir; according to this map.

Q. 169. Of course, you could not have been mistaken about it being north of that river, could you?

A. I don't see how in the world I could; no, sir.

Q. 170. You could see the river running, couldn't you?

A. Yes, sir.

Q. 171. And, if you could get that mistletoe without crossing the river, you wouldn't cross the river to get it, would you?

A. No, sir.

Mr. Hardie: In connection with the witness' testimony, we want to offer a copy which will correctly show the figures on it. We will have to make a photographic copy of this map, plaintiff's exhibit No. 21.

Attorney General Keeling: Now, Mr. Hardie, cannot you examine this witness from a map that you already have in the record, and let him show, on that?

Mr. Hardie: The map about which I have been interrogating the witness, and on which we have put "A," "B" "C" "D," is plaintiff's exhibit No. 21, introduced in this case on February 14, 1914.

Mr. Hardie. I believe that is all I care to ask at this time.

[fol. 135] Redirect examination.

By Attorney General Keeling:

Q. 172. Now, Mr. Kezer, you know nothing about this map?

A. No, sir.

Q. 173. This is the first time you have seen it?

A. Yes, sir.

Q. 174. This testimony you have given, on this map, has been an effort on your part to place your recollection and to put it on this map?

A. Yes, sir.

Q. 175. And as to the correctness of this map, you know nothing about that?

A. No, sir.

Q. 176. You do not attempt to testify about the correctness of this map?

A. No, sir.

Q. 177. You have been located on this river since 1897?

A. Yes, sir.

Q. 178. And you have observed it closely?

A. Yes, sir; very closely.

Q 179. Have you made your living down on that river?

A. Yes, sir.

Q. 180. I will ask you to state what the habits of this river are with reference to occupying its beds.

A. Why, there comes an overflow—a freshet, you understand, and lots of water coming down; and lots of drift, in those days; and it would cut in and cut in; and sometimes it would cut almost up stream; and there was lots of silt come down; and, of course, that [fol. 136] would turn out the silt, and that fills in the river bed. And then, the next overflow it might cut through. It is always changing. I have seen it with water in it, from the Santa Fe Railroad track, clear across the valley to the foothills. It is always cutting and filling.

Q. 181. Now, when it is cutting and filling that way, does it make those cuts and fills over a large amount of territory that way?

A. Sometimes it is big; and sometimes it is not so big. Sometimes it would change—oh, a thousand acres; and then something smaller again.

Q. 182. Now, then, how long would it cut, before it would cut over and cut off the ox-bow—if that is what you mean?

A. Some years we would not get so much water, and then it would stay; but it would be cutting and filling; and then we would get high waters and then it would cut over.

Q. 183. When it would change itself, was during the high water?

A. Yes, sir; during the very high waters. When it was very high, it did not cut very much; and when it would go down it would cut. When it was high, and then would go down, we never knew where we were going to find the river.

Q. 184. That has been the habit of that river during all the years you have known it?

A. Yes, sir.

Redirect examination.

By Honorable W. W. Turney:

Q. 185. Coming back to the map of the plaintiff's exhibit No. 280, which is the basis of this hearing, and on which surveys Nos. 156 [fol. 137] and 157 are shown, you do know where the new Country Club now is?

A. Yes, sir.

Q. 186. Located on survey No. 156?

A. Yes, sir.

Q. 187. You do know that survey No. 157 lies immediately to the west of that?

A. Yes, sir.

Q. 188. You do know that this yellow line on this map of the plaintiff, No. 280, showed a river running along the present Country Club road?

A. Yes, sir.

Q. 189. Did you ever see any such river running along the Country Club road to the east of the present new Country Club?

A. No, sir; not since 1898.

Q. 190. Did you see any there, before that?

A. Well, I was not in there, much, before 1898.

Q. 191. I asked you, did you see it?

A. No; I never saw it. But I have been familiar with that territory in there, since 1898.

Q. 192. Was there ever any such river running along the Country Club road, to the west, and eastward of and around the Country Club—a continuous river—such as is shown on this map?

A. No, sir.

Q. 193. Are you positive that the growth of timber which you described—the cottonwood and the tornillo growth that you testified about, was in that horn of the river, as shown on that map No. 280, [fol. 138] and westerly of the new Country Club houses?

A. Yes, sir. In August, 1916, we grubbed the biggest part of those, and got out a lot of big trees. And afterwards, the next year, we put in the Country Club—part of it. Part of it south and part of it north of these lines here.

Q. 194. Then you are positive that you not only saw this growth, but that you grubbed out this growth?

A. My men did it, and I paid them for it; or, Carl Longuemare and I did.

Q. 195. And that land was put in cultivation?

A. Well, it was, since. I don't know who put it in. We were stopped by injunction.

Q. 196. You were stopped, in your work, by an injunction?

A. Yes, sir.

Q. 197. Over how large a territory was that growth that you described—in acres?

A. I expect that part of it was south of this line. My recollection of it is, that there was one hundred and sixty acres of it.

Q. 198. That you cleared?

A. No—within that horn, I would say; probably about a hundred. Well, I don't know exactly where that line would go. Where that line would cut that land. But I think there was part of that one hundred and sixty acres that would be in there. About a hundred acres of it, in that horn, that we worked on, in there, in 1916.

Q. 199. And you have identified that, within about a month, last past?

A. Yes, sir.

[fol. 139] Q. 200. By going on the ground?

A. Yes, sir.

Q. 201. From time to time, during the years you have known this district, since you first saw it, you have been familiar with it, from being in there?

A. Oh, yes, sir. I had cattle up there, in pasture, and had occasion to go up and look after them, sometimes. I had horses and cattle up there, and was up there very much—frequently.

Q. 202. How far do you now live from the country we have been talking about—from the Country Club?

A. I suppose about three miles, or three and a half, in an air line. That is, from the south line of the Country Club.

Q. 203. Do you know where the old Country Club house was?

A. Yes, sir.

Q. 204. Where was it located, with reference to the present one? In direction and distance?

A. It would be about southeast, I should think.

Q. 205. Southeast—and about how far?

A. Possibly a thousand feet, in an air line. Of course, I have been to the old Country Club house, and to the other one. And I have walked it; and I would imagine that it was a thousand feet, or a little more.

Q. 206. When the river came to the east of the Country Club, where did it come from?

A. East of the new Country Club house?

Q. 207. Yes, sir.

A. It came from up near Montoya Switch,

[fol. 140] Q. 208. Running in what direction?

A. It ran pretty nearly south; about south. It did not come right on here, but it come in here (indicating on map No. 288). There was an old river bed for a piece, and then it came around there (indicating on map). (Witness indicates a point west of the present Country Club.)

There was an old river bed in there, all the time, since I have been in New Mexico; but it was an old, dry bed. But it did not go off in here, but came down in this direction (indicating on map).

Questions by Mr. Hardie:

Q. 209. It came onto this yellow line at about this point "47," did it?

A. Yes, sir.

Q. 210. It came into the yellow line, to the east of the Country Club?

A. Yes, sir.

Q. 211. And then came where?

A. There was an old river bed, about where that yellow line is, but it was not distinct. There was cuts in there.

Questions by Mr. Turney:

Q. 212. That was a river bed of about what date? About how long had it been a river bed?

A. Oh, it must have been years and years and years.

Q. 213. Was it a cut?

A. Yes, sir, it was just a cut in there.

Q. 214. When the river did come in there, did it very much enlarge that old channel?

[fol. 141] A. Yes, sir.

Q. 215. How large would you say that old channel was—that old slough was, in there, before 1905?

A. Oh, fifty or sixty feet, probably. Perhaps seventy-five feet wide, in the widest places. But then, of course, in places it had blown in; and there was brush in there, you know. But it would average that.

Q. 216. That river of 1905, that you talked about coming east of the Country Club, came in there in the Fall of 1905, did it not?

A. In June, 1905.

Q. 217. Did it come all of a sudden, or did it take time to get in there?

A. I don't think that anybody knew; because we laid sacks to keep the river from coming over the Santa Fe Railroad tracks, and when the river went down, there is where we found it.

Q. 218. Where did it hit the Santa Fe track?

A. It was overflow water that came from up above.

Q. 219. Nobody knew anything about where the river was, when it was up?

A. No, nobody could know.

Q. 220. Those floods, come, at times, with great intensity, do they not?

A. Yes, sir.

Q. 221. Tell us about the flood of 1905.

A. Well, I could not tell you the number of second feet.

Q. 222. Don't describe it by second feet, but by area over the valley.

[fol. 142] A. Well, it was about—it was a very bad flood, and was all over the valley.

Q. 223. And the result of that flood was that the river found itself a new bed?

A. Yes, sir.

Q. 224. How far was that new bed from the bed which it occupied in 1904, near the Country Club?

A. Oh, in places, it was a mile, or maybe a mile and a half; and in some places, two miles, I guess.

Q. 225. Mr. Kezer, is it not the fact, that the cutting of the river is usually done when the river is below the top of the bank?

A. Yes, sir; especially after we have had very high water. As it comes down, it eats in every place it cuts, very fast. In this case, in the change of 1905, it did that.

Q. 226. It was found to have swapped beds after the water went down?

A. Yes, sir.

Q. 227. And all within the space of about sixty days?

A. Oh, well, I should think it was within thirty days.

Q. 228. In what months do the floods usually reach that part of the valley? Or did they reach that part of the valley, before the Elephant Butte dam was built?

A. Well, some years they come earlier, and sometimes later. We had one flood—I think it was in 1889—that was along in June—quite late in June. They usually come quite late in June; but on this occasion I think this one came in the latter part of May.

Q. 229. Well, how long do they usually last?

[fol. 143] A. They don't generally last more than about thirty days.

Mr. Turney: That is all.

Recross-examination.

By Thornton Hardie, Esq.:

Q. 230. Mr. Kezer, the map that Mr. Turney has been talking about,—this map of R. J. Owen—September—October, 1923—when did you first see that map?

A. I do not think I ever saw that map before today, did I? Not that I know of.

Q. 231. Haven't you seen a map just like that, recently, with those lines on it?

A. Yes, sir; I saw a map, about a month ago, and it might have been that map. It was a good deal like it. But I could not make heads or tails out of it.

Q. 232. You hav-n't been able to make heads or tails out of it yet, have you?

A. Yes, sir; since I have been up there and located the Bell Pool, I have.

Q. 233. Who explained that map to you?

A. Nobody.

Q. 234. Who was with you, when you went up there?

A. Noel Longuemare was with me. I explained the thing out to myself.

Q. 235. Noel Longuemare went along with you?

A. Yes, sir.

Q. 236. That map, when you first saw it, was all Greek to you, wasn't it?

A. Yes. I couldn't make heads or tails out of it.

[fol. 144] Q. 237. But, since you have been up there with Mr. Longuemare, you have been able to understand it?

A. Yes, sir.

Q. 238. With whom have you discussed that map?

A. I hav-n't discussed that map with anyone.

Q. 239. Hav-n't you discussed it with Mr. Turney, or anybody else?

A. No, sir. I did talk with Mr. Miller, about how that ditch came on down there—that it did not run in there like that—like it is on that map. That was the only thing that would refresh my memory of that thing, if that should come up—about where the river was on the old Abraham place. I wanted to be sure about that.

Q. 240. How long were you up there, when you went up there to get this thing straight in your mind?

A. Why, a little over half a day.

Q. 241. Where did you go to?

A. Over to the Bell Pool, and over there in that vicinity; and over there to see where the old stage station was. And we did not

have this map, but we had a similar map with us, so I could locate these things on that, properly.

Q. 242. Now, when did you first see the present Country Club buildings?

A. Oh, I don't know. I saw it, occasionally, only, while they were building it, as far as that goes.

Q. 243. You have paid particular attention to this territory up there, with reference to these lines, only recently?

A. No, I hav-n't paid particular attention to it, only in passing by there. Longuemare never pointed out anything to me at all. [fol. 145] I saw it all myself, and figured it out, so I could locate it.

In 1907, I built a road, from Piedras Paradas clear on up to opposite the Canutillo Grant.

Q. 244. You hav-n't been up in that section very much, since 1907, have you?

A. Yes, I have been around there a good many times since then.

Q. 245. It is all changed, now, isn't it?

A. Well, yes, it has changed a good deal. A person who had not been there since 1907, and didn't know it, would have pretty hard work locating himself. But, of course, I have been around there myself, occasionally.

Q. 246. You went up on the hills there, to locate the various points, did you not?

A. Yes; and I took a map—not this one, but a smaller map—a similar map to this one—so that I could get the things straightened out in my mind.

Mr. Hardie: That is all.

Re-redirect examination.

By Honorable W. W. Turney:

Q. 247. You always knew where the White pumping station was, did you not?

A. Yes, sir.

Q. 248. And you always knew of the narrow slough, east of the Country Club, did you not?

A. Yes, sir.

Q. 249. And you always knew where survey No. 156 was?

A. Yes, sir.

[fol. 146] Q. 250. And where survey No. 157 was, just to the west of No. 156?

A. Yes, sir.

Q. 251. You always knew the spot where the present new Country Club is—the location of the present new Country Club?

A. Yes, sir.

Q. 252. And you always knew the land where you and Longuemare were clearing out the trees and stumps there, where you were enjoined from further progress?

A. Yes, sir.

Q. 253. And it is those things that you have been testifying about here, today?
A. Yes, sir.

Mr. Turney: That is all.

Re-recross-examination.

By Thornton Hardie, Esq.:

Q. 254. Now, this pumping station that was out there, that Mr. White has there—it pumped the water out of the river, didn't it?
A. No, not originally. You see, the river swung down off the Canutillo Grant, until he had to finally run the ditch on down there, and then pumped out of it. And then he finally pumped out of the river.
Q. 255. Well, he was pumping out of the river when you saw it?
A. I am not sure what year he left there. George Wafer pumped out of the river, and Mr. Miller may have pumped out of the river, for one or two years, before he left there. Yes—of course, he did. But I don't know what year he left up there. I don't know what kind of an answer to make to your question, because I don't know [fol. 147] what year Wafer left there, and in what year Miller came there. I could go over my books and find out, because the year he went there, I took some stock up there to pasture, and I have a record of it.
Q. 257. He was pumping out of the river, then?
A. Yes, sir. The river was in there then. But Miller—for several years they ran the water down there. You see, they couldn't get the water onto the land out of the ditch, and get it on the ground; and they ran the water down there, and then pumped it out onto the ground.
Q. 258. The river wasn't down there then?
A. Oh, yes, it was right west of there.
Q. 259. Along in about October, 1905?
A. Yes—in the Fall of 1904, it was in sight of the Santa Fe tracks at Montoya Switch. I know that, for I stood on the track there, one day, and saw it, and I know what I am talking about. And at that time they were running the water down in this old river bed that was right here (indicating on the map), and they pumped it out of that.
Q. 260. Where did the ditch come out?
A. They were ditching it from the river, down in that old ditch or slough, and then pumping it out onto the land.
Q. 261. The ditch came from the north of where they pumped it out?
A. Yes, sir; a little northeast, I guess.

Mr. Hardie: That is all.

The witness was then excused.

[fol. 148] It being now the hour of noon, a recess was taken until two o'clock P. M.

And at two o'clock in the afternoon of said Thursday, June 19, 1924, the further hearing of this cause was resumed, and the following proceedings were had:

THOMAS W. ZIMPLEMAN, called as a witness on behalf of the State of Texas, having been by the Referee, first duy sworn, according to law, to testify to the truth, the whole truth and nothing but the truth, in the cause now pending, upon his said oath testified as follows, to-wit:

Direct examination.

By Honorable W. W. Turney:

Q. 1. Please state your name.
A. Thomas W. Zimpleman.
Q. 2. Mr. Zimpleman, where do you live?
A. I live at No. 2627 Louisville Street, in the Highland Park district, El Paso, Texas.
Q. 3. How long have you lived there?
A. About eight months, now.
Q. 4. Where did you live, prior to coming to El Paso to live?
A. Down the valley, in the Socorro district.
Q. 5. How long did you reside there?
A. Well, I moved there in 1911, and lived there until about 1923. The Fall of 1923.
Q. 6. Prior to living at Socorro, where did you live?
A. I lived up the river, at Canutillo.
Q. 7. For what length of time did you live at Canutillo?
[fol. 149] A. I lived there about thirteen years.
Q. 8. Did you live on the Canutillo Grant?
A. Yes, sir.
Q. 9. Do you know where White's Spur was?
A. Yes, sir.
Q. 10. How far did you live from White's Spur?
A. About two miles.
Q. 11. And in what direction?
A. That would be south of me.
Q. 12. White's Spur would be south of where you lived?
A. Yes, sir; it would be south of me.
Q. 13. How many years did you live at Canutillo?
A. Seventeen years.
Q. 14. And, about what year, then, did you go there?
A. I moved there in 1898.
Q. 15. What was your business in Canutillo?
A. Farming and stockraising.
Q. 16. Did your father own land there, prior to that time?
A. My father owned the land that I was living on.

Q. 17. Who was your father?
A. George B. Zimpleman.
Q. 18. Did George B. Zimpleman ever live in El Paso?
A. Yes, sir; he lived at El Paso.
Q. 19. What was his business here at El Paso?
A. He had business between here and Old Mexico. He was engaged in the mining business in Mexico—and land business—and he made El Paso his home.
Q. 20. Where did he live, before that?
A. At Austin, Texas.
Q. 21. Well, during the time that you lived at Canutillo and near [fol. 150] there, were you well acquainted with the valley to the south of Canutillo, and towards El Paso?
A. Yes, sir.
Q. 22. Do you know the land that Mr. Z. T. White owns, up there?
A. Yes, sir.
Q. 23. Do you know the numbers of the surveys?
A. Well, I used to know them. I am afraid I have forgotten all about them now.
Q. 24. Have you recently been to the place where the new Country Club is now?
A. Yes; I was there the other day.
Q. 25. Along about a month ago, or something like that?
A. I guess about a month ago.
Q. 26. Were you ever well acquainted with the land, and the conditions where that new Country Club now is?
A. Well, yes, I have always been well acquainted with that section.
Q. 27. Did you frequently travel over that district?
A. Yes, sir; I used to go about through there a great deal.
Q. 28. In what years?
A. Well, I was up there from 1898 until 1904.
Q. 29. Where were you living in 1904?
A. I lived at Canutillo then.
Q. 30. State whether or not, in the year 1904, there was a change in the river at any place up there?
A. Yes, sir, there was a change in the river in 1904.
Q. 31. What caused that change?
A. There was a big cloudburst up there at La Union, that filled the river up with sand.
[fol. 151] Q. 32. Where was the river then?
A. The river was west, then.
Q. 33. How near to the foothills, on the west side of the valley?
A. Well, it ran right along next to the foothills, then.
Q. 34. You say the cloudburst was near La Union?
A. At La Union.
Q. 35. Above or below?
A. Just above La Union.
Q. 36. Where was La Union, at that time? Where was it situated?
A. La Union was across the river.
Q. 37. In the valley, or in the edge of the hills?

A. Right in the foothills.

Q. 38. Then, this cloudburst was not flood water from above, but came in from the west?

A. No, it was not floodwater, it was a cloudburst.

Q. 39. And it lasted how long?

A. Oh, I don't know how long it lasted. After I saw the cloudburst, or part of the cloudburst up there, why, then I went up and looked at it; and the people up there all wanted me to go there and cut a channel up there, so as to let the water on down.

Q. 40. What effect did that have on the river channel?

A. Why, that made the river go east.

Q. 41. Did it cut east that year, or the next year?

A. No, it went east in 1905.

Q. 42. The cloudburst, you say, filled the channel up: To what depth did it fill it up?

A. It filled it up, clear from bank to bank.

Q. 43. What happened the next year, when the flood came?

A. The next year, why, when the river came down, it all broke [fol. 152] over, and come into the Canutillo arroya.

Q. 44. Where was the Canutillo arroya?

A. The Canutillo arroya ran right down the Santa Fe Railroad track.

Q. 45. Where was the river then? Where did the river then go, with reference to the present Country Club?

A. When it come down to my place, then it bursted over and went down around by the—it cut a new channel around my place, and down around by the new Country Club.

Q. 46. On which side of the Country Club?

A. Why, it left the Country Club on the west side of the river.

Q. 47. Prior to that time, where was the main channel of the river?

A. The main channel was west, next to the foothills.

Q. 48. How long did the river run on the east side of the Country Club?

A. Along since 1905.

Q. 49. How long did the river run on the east side of the Country Club?

A. Well, it ran there ever since I was up in the country there—since 1898.

Q. 50. I do not think you get my question: After the flood of 1905, when you say that the river cut to the east of the Country Club, how long did the river remain on that side?

A. Well, it has been running there since 1905.

Q. 51. How long did it run there?

A. Well, it stayed in there until the present time.

Q. 52. You do not mean to say that it is there now, Mr. Zimpleman, do you?

A. Yes, the river now is—the Country Club is on the west side of the river now.

[fol. 153] Q. 53. Do you mean that, today, the main channel of the river is on this side of the new Country Club?

A. Yes.
Q. 54. Do you cross the river, to go to the new Country Club?
A. Yes. The new Country Club is on this side of the river.
Q. 55. Yes, sir: But how long did the river run on this side?
A. Well, it only run there since 1905.
Q. 56. It ran there from 1905, up to what year?
A. Until the present time.
Q. 57. It is there now—the river runs on this side of the Country Club now?
A. Well, the Country Club now is on the west side of the river.

Hon. W. W. Turney: He does not understand that.

Q. 58. When you went up to see the Country Club, and its location, a month ago, did you cross the Rio Grande?
A. Yes, sir.
Q. 59. Did you cross the river before you got to the Country Club?
A. Yes, sir.
Q. 60. The Country Club is on the other side of the river?
A. Yes, sir.
Q. 61. Did you cross the river, when you went up there with Mr. Longuemare, a month ago, in order to get to the Country Club? Did you have to cross the river?
A. As far as my recollection is, yes. But I won't swear to it.
Q. 62. Do you know where the Bell Pool now is?
A. Well, yes, I saw it when I was up there.
Q. 63. When did you see it?
A. Oh, about a month ago.
[fol. 154] Q. 64. Did you go west of the Bell Pool?
A. Yes, sir; we went west of there.
Q. 65. Did you cross the river anywhere near the Bell Pool?
A. We crossed the river. I think there is a survey across the river, there, but I am not sure.

Mr. Turney: That is all.

Cross-examination.

By Thornton Hardie, Esq.:

Q. 66. Mr. Zimpleman, you have been through a great deal of sickness, lately, hav-n't you?
A. I have been, yes.
Q. 67. Your wife has had to transact a great deal of business for you?
A. Yes, sir; a good deal.
Q. 68. About how old are you?
A. I am sixty-six years old.
Q. 69. And you have not been well for quite a while?
A. No, for the last three years I hav-n't been very well.

Mr. Hardie: That is all.

Thereupon, at the suggestion of counsel for the State of Texas, the further hearing of this cause was adjourned until tomorrow morning, at ten o'clock.

[fol. 155] And on Friday, June 20, 1924, the parties met, pursuant to adjournment, at ten o'clock A. M., and there were present the same persons as on yesterday.

Thereupon, the following proceedings were had:

Mr. L. W. SMITH, called as a witness on behalf of the defendant, The State of Texas, having been by the Referee first duly sworn according to law to testify to the truth, the whole truth, and nothing but the truth, upon his said oath testified as follows, to-wit:

Direct examination.

By Honorable W. W. Turney:

Q. 1. Please state your name to the Referee.
A. My name is L. W. Smith.
Q. 2. Where do you live, Mr Smith?
A. In El Paso, Texas.
Q. 3. How long have you lived here?
A. Oh, since 1898—about 1898.
Q. 4. Continuously until now?
A. Yes, sir; excepting a few times when I went out to do some work in some other places, like in Douglas, and in Chihuahua.
Q. 5. But this was still your home, was it?
A. Yes, sir.
Q. 6. What is your business?
A. Tile and marble setting.
Q. 7. Have you had occasion, Mr. Smith, to visit the valley above El Paso, and above Courchesne's bridge, and about where the Country [fol. 156] Club is located? During the years that you have resided in El Paso?
A. Well, yes, we used to go fishing and hunting, up there, all the time, in all of those years.
Q. 8. In what years did you go hunting and fishing up there?
A. Well, from about 1901 until 1917.
Q. 9. How did you go, in those years?
A. By wagon.
Q. 10. How frequently did you make trips to that district, hunting and fishing, and during what months would you go there?
A. Well, I could not say exactly how much, but we used to go often; and we would start—well, we would go all the years. Some years we would make maybe twenty-five or thirty trips; and some years maybe only fifteen or twenty.
Q. 11. Are you very fond of fishing and hunting.
A. Yes, sir.

Q. 12. That is your principal recreation?

A. Yes, sir.

Q. 13. Did you keep equipment for that purpose.

A. Yes, sir.

Q. 14. What equipment did you keep?

A. Well, I used to keep a camping outfit, and a top covered wagon; and I had a team. Of course, I used the team in my business, in addition to my trips.

Q. 15. And, usually, how long were you engaged on those separate trips?

A. Well, most of the time we would go up Saturday afternoons, and we would stay until Sunday night or Monday morning.

Q. 16. Where did you generally go to?

[fol. 157] A. Well, we generally went to Harper's Lake. When that was good, and when it was so that we could get over the river; and before the river come down; and before they put a bridge there. We used to go up by White's Spur, also, and fished in the slough there; and hunted around there.

Q. 17. Where is Harper's Lake?

A. Harper's Lake is south and a little west of the Country Club.

Q. 18. How far from the Country Club would you say it is?

A. Oh, I guess it is—maybe a mile, a little more or less.

Q. 19. A mile south of the Country Club?

A. No, not so far as that, south, I don't think. Sort of southwest.

Q. 20. Who were your companions on those journeys?

A. Oh, sometimes—lots of them. I don't remember all of them, now. I would change. I very seldom went with the same ones. One week it would be one bunch, and another the next week.

Q. 21. Mention some of your companions who are still living here.

A. Well, Judge Harper—he was one of them, and Jones—C. R. Jones—Give-a-damn-Jones.

Q. 22. The winters that you went in there from White's Spur, in which direction would you go, towards Harper's Lake, and where would you go with reference to the present Country Club road?

A. We never went from White's Spur to Harper's Lake. We could not go across there. There was too much quicksand there.

[fol. 158] Q. 23. Where was the quicksand?

A. Well, right west from White's Spur, where the river is. The river, there—you could not cross it there, very well, except in real dry times. When the water was in there, we used to have a boat that we used to get across with.

Q. 24. What river are you talking about, now? The river of what year?

A. Along about 1908, and 1909, and 1910.

Q. 25. You were speaking now about before 1905, and prior to it—or after 1905?

A. Both.

Q. 26. Well, now, with reference to the Country Club, how did you get to Harper's Lake?

A. How do you mean? From the Country Club?

Q. 27. No, from here.

A. Well, we never went from where the Country Club is, from here, except in the first few years—in 1901 and 1902 and 1903, and along there, when we used to fish in along there about White's Spur, as they called it there.

Q. 28. What did you fish in, about White's Spur?

A. In the slough there.

Q. 29. How long did you fish in there?

A. Along up to 1905.

Q. 30. What happened in 1905 to cause you to cease fishing there?

A. Why, the river come there.

Q. 31. What time in the year 1905 did the river come east of the Country Club?

A. Oh, in July.

Q. 32. Had there been a flood?

[fol. 159] A. Yes, sir; in June.

Q. 33. Where was the river prior to 1905?

A. Over towards the foothills, pretty near to where it is now.

Q. 34. Over to the west side of the valley?

A. Yes, sir.

Q. 35. West of the present Country Club?

A. Yes, sir.

Q. 36. After the June flood, in 1905, in what direction did the river run? Coming from the north to a point near the Country Club?

A. Well, it cut almost due south. It cut right through there, up there through the slough, to where Mr. White built a dyke. It cut through there, and he built a dyke there; and then it come down through this slough, where we used to go fishing.

Q. 37. How long had you known that slough, through which the 1905 river came?

A. Oh, four or five years. Three or four years. I would not say positively, but anyway it was three or four years.

Q. 38. Describe that slough as to width, and the amount of water in it.

A. Oh, well, sometimes there wasn't very much water in it at all, but only in several deep holes in it. There were several deep holes in it, at different places. I suppose it was thirty or forty, or maybe fifty feet wide.

Q. 39. How long was this slough that was east of the Country Club?

A. Oh, about a mile, or maybe more. I could not say. There [fol. 160] were some places where I never went to that part, where there was a lot of willows growing, and where we did not want to go in on account of the mosquitos.

Q. 40. Was that below or above the Country Club?

A. I think that was right above the Country Club—that is, looking east.

Q. 41. Now, you know where the Country Club is, today, don't you?

A. Yes, sir.

Q. 42. And you know where that old slough is now?

A. Yes, sir.

Q. 43. As well as you did in the early days?
A. Yes, sir.
Q. 44. With reference to the Country Club, where is that slough?
A. Why, a little bit northeast. Well, it ran due east of the Country Club, and a little bit northeast.
Q. 45. That is the long slough that you are talking about?
A. Yes, sir.
Q. 46. The one that was thirty or forty or fifty feet wide?
A. Yes, sir.
Q. 47. Now, was there a slough north of that, towards Canutillo?
A. Yes, sir.
Q. 48. How far north, would you have to go before you found another slough?
A. Oh, I suppose about half a mile, or maybe a mile.
Q. 49. Now, how often, if you can remember, were you in the district west of the slough about where the County Club is now located?
A. Well, every time we went up there. We used to have to go back a piece, and I would not want to try to say exactly how much [fol. 161] back—for a good camping ground; to get a big tree to camp under, for a camping ground, and dig a hole and put our beer in it to keep it.
Q. 50. How far was that from the slough?
A. Oh, we would sometimes have to go back three or four hundred yards back from the slough to get where there was a tree that was big enough.
Q. 51. Was that west of the slough?
A. Yes, sir.
Q. 52. Now, describe that district in just *west* of the Country Club, where you camped.
A. Oh, just good old trees; some of them, naturally, fell; and there was a road near, in through there; and there was wood-choppers chopping wood and hauling wood through in there,—from there.
Q. 53. How large were those trees?
A. Well, all sizes.
Q. 54. Well, up to what dimension?
A. Oh, two foot, and twenty inches, and I guess some of them were even larger than that, although I never measured any of them. There are some of them there yet.
Q. 55. How extensive was that growth of trees? How far west did it go?
A. Oh, it went almost to the river.
Q. 56. Now, do you know where the present Country Club road is, that goes to the Bell Pool?
A. Well, I guess that is that there gravel road up there, isn't it?
Q. 57. Yes, sir.
A. Yes, sir, I know where that is.
[fol. 162] Q. 58. Have you seen it recently?
A. Yes, sir.

Q. 59. State whether or not that growth of trees was south of this Country Club road, that they call it, that goes across from White's Spur to the Country Club, and to Bell's Pool.

A. Yes, sir, certainly, south and west.

Q. 60. Had that forest of trees been disturbed by anyone except the woodchoppers?

A. Not that I know of.

Q. 61. Was it a natural growth of trees?

A. I don't know anything about a natural growth.

Q. 62. In other words, it was an uncut forest, when you first saw it?

A. Yes, sir.

Q. 63. And later on you would see young trees growing on it? —. ——.

Q. 63. Well, that is what I mean—a natural forest—unplanted?

A. Yes, sir, that was a natural forest.

Q. 64. A forest that had not been planted? That had not been cleared?

A. No. We used to drive over the road nearest to the slough; and we saw some stumps in there; and there was woodchoppers in there.

Q. 65. Where was that road, with reference to the present Country Club—that road goes to the Bell Pool? Where was that woodchoppers' road?

A. Well, it was west of the Country Club. West and north.

Q. 66. Now, after the 1905 flood, when the river changed, coming from the north, and went east of the Country Club, how did you get to that district up there, to Harper's Lake?

[fol. 163] A. Why, we didn't go to that district, then, after 1905.

Q. 67. Where did you go?

A. We used to go around, and ford the river, either at Courchesne's here, or go up to Canutillo, to get across.

Q. 68. And after you reached that spot, in that section of the country, you had either to go up to Canutillo, and cross the river, or to cross the river at Courchesne's, and go on up?

A. Yes, sir.

Q. 69. About when did you quit going?

A. Six or seven years ago. I don't know exactly the date; but we dropped off going, and quit going around them places no more.

Mr. W. W. Turney: You may take the witness.

Cross-examination.

By Thornton Hardie, Esq.:

Q. 70. Mr. Smith, you speak of Harper's Lake: In what direction from the present Country Club building was Harper's Lake?

A. Well, it is a little—I guess that is northwest; a little northeast of where the Country Club is now, towards the hills.

Q. 71. About how far north?

A. Not so very far north, but it would be over a mile west.

Q. 72. Would it be a mile north?

A. I do not think it would be hardly that far.

Q. 73. Now, the place that you speak of as fishing in a slough, was that just a little south of Harper's Lake? In other words, if you went due west from the slough towards Harper's Lake, would you have to go very far north to get to Harper's Lake?

[fol. 164] A. You would have to go some north, but not very much; maybe half a mile.

Q. 74. Now, in those days, Mr. Smith, most of the valley was not in cultivation, but it was mostly grown up in trees, wasn't it?

A. There was no cultivation that I know of, except one place right above White's Spur, where a fellow had in a little corn field there; and then I think that at Montoya there was a little corn there, but I never went over there, and seen what they raised.

Q. 75. Now, the river, as it came down through that section, was making a great many bends out into the valley, wasn't it?

A. In some places, yes.

Q. 76. Now, some place to the south—you know where Mr. White put his dyke?

A. Yes, sir.

Q. 77. The river was cutting out into the valley quite a bit, in there, wasn't it?

A. Which way do you mean?

Q. 78. Going out towards the east, towards where Mr. White had his dyke.

A. Well, the river cut right through there in 1905.

Q. 79. But I mean before that time.

A. No, it used to run—my first recollection of the river is, that it went right against the foothills. And then, after we got to going fishing up there, why, it changed, and come about—oh, I guess two or three hundred yards away from the foothills. And, of course, it made all different kinds of turns, and in some places more and [fol. 165] some places less, to about the present place.

Q. 80. Did you know the river when it was running through the place that you call Harper's Lake?

A. No.

Q. 81. You did not know the river at that time?

A. No. I think that was the first time I went up there to Harper's Lake. I think that was about the first time.

Q. 82. Harper's Lake was really in the old river bed there, wasn't it?

A. Yes, sir.

Q. 83. Do you suppose it was called Harper's Lake until the river got out of there?

A. No.

Q. 84. And Harper's Lake has only existed since 1905, hasn't it?

A. Oh, no, it existed before that. It existed in 1901.

Q. 85. The river changed out of there, in 1905, and that was when it began to be known as Harper's Lake?

A. No, Harper's Lake was there before that.

Q. 86. But it was in the old river bed, wasn't it?

A. Yes, sir.

Q. 87. Where the river used to run?

A. Yes, sir.

Q. 88. Do you know where Mr. Trousdale lives, on Mr. Crawford's place, up there?

A. No, sir.

Q. 89. Did you ever go up north of Harper's Lake?

A. Yes, sir.

Q. 90. Have you been up there since 1913?

A. Yes, sir.

[fol. 166] Q. 91. Didn't you see some cultivated lands up northwest of Harper's Lake—some little patches of cultivated land in there, northwest of Harper's Lake?

A. Well, there is some up north up there, coming down that road from Vinton. There was several places in there. Several little places where they had cultivation in there, but I do not know whose they were.

Q. 92. You do not know where Mr. Trousdale's place is?

A. No, sir.

Q. 93. Do you know where the southwest corner of the Canutillo Grant is?

A. No, sir.

Q. 94. Have you been up to Harper's Lake recently?

A. No, sir.

Q. 95. How long has it been since you have been up to Harper's Lake?

A. Oh, seven years, or maybe more. Eight years, or more.

Q. 96. The country is all changed, up in there, since you used to go up in there?

A. Yes, sir.

Q. 97. When were you up around the Country Club district, there, the last time?

A. About a week ago.

Q. 98. Whom did you go with, then?

A. I went with Mr. Longuemare.

Q. 99. The gentleman associated with Mr. White?

A. I don't know.

Q. 100. They have been pretty close friends for a long time, haven't they?

A. That is something that I do not know. I never knew Mr. [fol. 167] Longuemare, much.

Q. 101. You have known Mr. White for a long time?

A. Yes, sir.

Q. 102. Now, Mr. Z. T. White, the gentleman that you spoke of, is present at this hearing, at this time.

A. Yes, sir.

Q. 103. He is sitting here at this hearing?

A. Yes, sir.

Q. 104. And he is a man fully capable of testifying, is he not? That is, he is a man in his right mind, and fully capable of testifying?

A. I would not want to say that.

Q. 105. Well, you know that he is in his right mind, don't you?
A. It may be.
Q. 106. And he is pretty lively, isn't he?
A. Yes, sir.
Q. 107. And this Mr. White has been acquainted with this country we have been talking about, for a great many years, hasn't he?
A. Well, he had White's Spur; and he had a lot of alfalfa up there, when I first come here.
Q. 108. Well, he has known this country up there, ever since you have been here?
A. Yes, sir.
Q. 109. And is familiar with this country—as familiar as you are?
A. I guess he ought to know it a whole lot more than I do. A whole lot better than I do.
Q. 110. A whole lot more than you do?
A. Yes, sir.
Q. 111. Now, we have a map here, which is map of the Reclamation Service of the United States.

[fol. 168] Hon. W. W. Turney: Let us understand about that map: With the permission of the Attorney General of the State of Texas—is it your intention, Mr. Hardie, to offer that map in evidence?

Thornton Hardie, Esq.: Yes, sir; for the purpose of explaining this evidence. To that extent.

Hon. W. W. Turney: We want you to understand that we are going to offer strenuous objections to the introduction of any map in evidence, except the pleading map prepared for the purposes of this hearing.

Thornton Hardie, Esq.: Yes, sir; I understand that you will offer strenuous objections.

Honorable Frank W. Clancy: This map is already in evidence, and already being in evidence, I do not understand how there can be objection to its being used.

Attorney General Keeling: Do you propose to re-introduce it, or to just rely on the record already made.

Thornton Hardie, Esq.: I think we shall want to introduce certain points on this map; and, probably, then, we will have to introduce a photograph of the portion of the map showing those points, and figures. Is not that right, General Clancy?

Hon. Frank W. Clancy: I do not want to interfere with your presentation of Mr. Crawford's interests.

[fol. 169] Hon. W. W. Turney: That map was introduced in evidence in this case, before, for a specific purpose, wholly disconnected with anything that concerns this inquiry; and, to make it a basis, now, of testimony would be an entirely new purpose, and would be in violation of the stipulation of the Court, and adding something that is prohibited by the order of the Court. That map has never been proved up as a map, except for the purpose for which it was first introduced, which is reflected in the record in this case. When you do offer it, we will make such further objections as we then deem proper;

but that map is not a map that the Court authorized to be inquired about, or testified about, or used, in any way, in this case—unless we might use it to rebut Mr. Owen.

Thornton Hardie, Esq.: All right.

Q. 112. Now, on this cap, this the Rio Grande, down through here (indicating on the map). You see how the Rio Grande runs through this section of the country, coming down here. Now, it shows White's Spur as being in about this position; and Montoya in about this position,—somewhere in here (indicating on map). Canutillo, it shows on the map; and White's Spur, and the gravel pit. It shows a big bend in the river, toward the east, and right opposite that big bend it shows "Old Border," "White's Spur." Now, this map shows [fol. 170] that in 1903 the river was running not very far from where this old border was put in there. I do not know whether the border was there at that time.

Hon. W. W. Turney: That is the trouble about a map. You cannot tell about it—when the things represented on it were put on the ground.

Q. 112. (continued). Now, this map shows the river going back against the foothills, west of White's Spur, and nothwest of a letter "D" marked on this map in ink. Then it shows the river going north, and winding out into the valley and making twists, and then going back again to the foothills again at a place about due west of Montoya. Do you understand that?

A. Yes, sir.

Q. 113. Now, do you remember when the river was running in about that position, in that section of country, in 1903?

A. No.

Q. 114. You did not know the river at that time?

A. Yes, I knowed the river, but that map is wrong. The river ran along in about here (indicating on the map).

Q. 115. All right: Let us have your idea of about where the river was at that time. Will you put on this map, in pencil, about where you think that the river was running at that time?

A. Yes. (The witness then marked upon the map, in pencil, a line.)

Q. 116. Continue your mark, representing the river as you understood it to run, on up toward Canutillo, please?

A. I do not know that I could do that. I cannot make the crooks [fol. 171] in there. Now, this here place that was in there (indicating on map)——

Q. 117. That was going up against a high bluff, was it not—the point that you now speak of?

A. Well, I don't know. There was a fellow has got a house and some things up there, and was up there all the time; and he has been up there for years. He was there then—in 1903.

Q. 118. What was his name?

A. I don't know his name. He was a Mexican.

Q. 119. Do you know, or did you know, a Mexican by the name of Bernabe Alba?

A. I did not know the names of any of them. But, in 1901, the river was over here, and after I came up there fishing, it appears like the river come out somewheres along in here (indicating on the map).

Q. 120. About where the letter "E" is?

A. Yes, sir.

Q. 121. When did it come out in there?

A. Well, I don't know just when, but somewhere, from along in there, in about 1901.

Q. 122. Now, this line that you put in there to show where the river was in 1903, is the line that you put in in pencil, but that I am now running in ink. Now, is that right?

A. Yes, sir.

Q. 123. Now then, you think that this map is incorrect, in showing the location of the river of 1903—this United States Reclamation Service map?

A. Yes, sir.

Q. 124. Now, about "E," and north of "E," do you know where [fol. 172] the river was running in 1903? Was it running in straight lines or crooked lines?

A. It was running in crooked lines. It always runs in crooked lines.

Q. 125. It always runs in crooked lines?

A. Yes, sir.

Q. 126. It goes up against the hills, and then comes out again?

A. Well, it did, but I don't believe there is but one place, now, where it runs up against the hills.

Q. 127. That one place that you speak of, where it runs up against the hills, is about here, where I marked "F" on this map?

A. I think so.

Q. 128. Between "F" and "G." You think that "F" is the only place that it was actually running up against the hills, in that period?

A. Yes, sir. There ain't no hill on here, of course. There is a little higher land there.

Q. 129. Well, is not that the highest Santa Teresa bluff, there at "G"?

A. Yes, sir; but the river didn't run over to that there.—Oh, yes, that is right: that is where the big sand hill comes down to the river.

Q. 130. That is where the river went to the hills?

A. Yes, sir.

Q. 131. And, after the river left the Santa Teresa bluff, it came out into the valley, again, did it not?

A. Yes, sir.

Q. 132. You did not do any surveying, up in there, did you?

A. Oh, no.

Q. 133. What was your business in those days?

[fol. 173] A. Tile and marble setting.

Q. 134. How long have you known Mr. Z. T. White?

A. Oh, I guess for twenty-two or twenty-three years.

Q. 135. Now, when you were up there with Mr. Longuemare, which you say was about a week ago——

A. Yes, sir.

Q. 136. Did he take you over and show you the Country Club?

A. Yes, sir.

Q. 137. Did he take you right there?

A. Yes, sir.

Q. 138. Did he have a map with him?

A. Yes, sir. He had a little map.

Q. 139. Did he point out certain places there, and help you to locate yourself?

A. Yes, sir.

Q. 140. Before that time, how long was it that you had seen the Country Club?

A. I never saw it before.

Q. 141. That was the first time you saw the Country Club—when Mr. Longuemare took you up there?

A. Yes, sir.

Q. 142. Then, you had not passed along there through that neighborhood, before then, since the Country Club was built?

A. No, sir.

Q. 143. The whole country up there has changed its looks, since you were up there before.

A. Yes, sir.

Q. 144. The trees that were there, when you were there before, had been cut down?

[fol. 174] A. Yes, sir.

Q. 145. And the underbrush has been cut out?

A. Yes, sir.

Q. 146. And roads have been put in there?

A. Yes, sir.

Q. 147. And the entire face of the country has been changed up there, hasn't it?

A. Yes, sir.

Q. 148. Now then, this slough that you spoke of, up there, extended along east of the Country Club for quite a distance, didn't it?

A. Oh, it twisted around there for about a half a mile, I guess.

Q. 149. It twisted in a northeasterly direction, after it left the Country Club?

A. Yes, sir.

Q. 150. And you can still see, up there, where there is sand coming down from the northwest—from the road, can't you?

A. Oh, there's lots of slough there yet; but there ain't no water in it.

Q. 151. The slough is northeast of the Country Club, for quite a distance, isn't it?

A. Yes, sir.

Q. 152. About a half, or three-quarters of a mile?

A. Yes, sir.

Hon. W. W. Turney: The slough, or the depression?

Thornton Hardie, Esq.: The slough.

Q. 153. The place where the slough was?

[fol. 175] A. Yes, sir.

Q. 154. Now, that is the place where you men went fishing in those earlier days?

A. Yes, sir.

Q. 155. You never took any measurements of that slough, did you?

A. Oh, no, sir.

Q. 156. Or took pictures of it, or anything like that?

A. No, sir.

Q. 157. And when you went up there, a short time ago, to look at this place, you found the entire face of the country changed—the vegetation cleaned off, and the old landmarks gone?

A. Yes, sir.

Q. 158. And you would have had a great deal of difficulty, in going up there alone, and identifying this place, wouldn't you?

A. No, I would not have, after I got located once.

Q. 159. After you got located?

A. Yes, sir, once I had got located and got the line on Harper's Lake.

Q. 160. Did you go to Harper's Lake, while you were up there, the other day?

A. No, I did not. We went right across from it—as near right across from Harper's Lake as we could go, to where I could locate it.

Q. 161. Now, let's see how you went, to go to Harper's Lake: You went past the Country Club, didn't you, and west of the Country Club?

A. Well, we went nearly—we went almost to the river; and then we took an old road along the river.

[fol. 176] Q. 162. Didn't you cross the river?

A. No, sir.

Q. 163. Well, then, you did not get anywhere near to Harper's Lake?

A. No, not very near; but where we could see where that was. Where I could locate it.

Q. 164. Well, it was still a good deal north from where you were?

A. Well, it was a little northwest of where we were, yes.

Q. 165. It was about two or three miles north of where you were, wasn't it?

A. Oh, no.

Q. 166. How do you know that? How do you know that that was where Harper's Lake was?

A. Why, I know it from looking at it, in different ways, from where I was.

Q. 167. How did you know it?

A. By the hills.

Q. 168. By the foothills?

A. Yes, sir.

Q. 169. Just by looking at the foothills, from where you were in the valley, you could locate where you were?

A. Yes, sir.

Q. 170. And where Harper's Lake was?
A. Yes, sir.

Mr. Hardie: That is all.

Redirect examination.

By Hon. W. A. Keeling:

Q. 171. This map that was shown to you here, this morning—is this the first time that you ever saw that map?
A. Yes, sir.
Q. 172. You do not know anything about that map, or about its [fol. 177] correctness, or anything like that, except only these places that you identified, and found it to be incorrect, in that respect?
A. Yes, sir. I guess I could not tell any more; but, you know, I know that place so well, because I went fishing there so often.

Mr. Keeling: That is all.

The witness was then excused.

Mr. C. F. Jones, called as a witness on behalf of the defendant, The State of Texas, having been by the Referee first duly sworn according to law to testify to the truth, the whole truth, and nothing but the truth, upon his said oath testified as follows, to-wit:

Direct examination.

By Hon. W. W. Turney:

Q. 1. State your name to the Referee, please.
A. My name is C. F. Jones.
Q 2. Where do you reside, Mr. Jones?
A. At San Marcial and Rivera streets, El Paso, Texas.
Q. 3. How long have you resided in El Paso?
A. Forty-four years.
Q. 4. What is your business?
A. I am a carpenter.
Q. 5. Do you know the country to the west and the southwest of White's Spur?
A. Yes, sir.
Q. 6. How long have you known that district in there?
[fol. 178] A. I have hunted over there, for about forty-three years, and fished all through there.
Q. 7. When did you first begin to hunt and fish in that district?
A. In 1882.
Q. 8. How much hunting and fishing did you do? How frequently did you do that?
A. Oh, we used to fish, two or three times a month; and we used to hunt every Sunday during the hunting season.

Q. 9. Who were your companions, in those expeditions?
A. Milt Spencer and others—numerous others.
Q. 10. Did you ever hunt and fish with Judge Harper?
A. Yes, sir.
Q. 11. Is he given to hunting and fishing?
A. Yes, sir.
Q. 12. Did you ever fish and hunt with Mr. Smith, the witness who was just in here?
A. Yes, sir.
Q. 13. During what years did you go with those gentlemen?
A. Well, I was with them, from about 1903 until the present time, and still going with them during the hunting season.
Q. 14. Is that your principal pastime?
A. Yes, sir, that is my sport—fishing and hunting.
Q. 15. You spent a good deal of time up in that section of the country that we are talking about?
A. Yes, sir; I used to, but not so much now, because there is nothing there to hunt.
Q. 16. When you went to White's Spur, did you usually hunt and fish?
A. Well, I fished from the bend above what they call Courchesne's [fol. 179] bridge, clear around what they call the Granite Dyke.
Q. 17. Is that the Piedras Paradas?
A. That is above the Country Club. I fished all along in there.
Q. 18. Where was the river, up there, in 1903?
A. In 1903 the river ran right along by the sand hills.
Q. 19. What sand hills?
A. Right by that bluff, opposite the Granite Dykes.
Q. 20. Do you know any names of those bluffs over there?
A. They are Antes rock, but they call it the Granite Dykes.
Q. 21. Do you know anything about the Santa Teresa bluffs?
A. Well, I know about where it is. That is the place where Mr. Austin claimed it, along about 1902 or 1903. I know about the general location—not particularly, though.
Q. 22. Did you know a place called Harper's Lake?
A. Yes, sir.
Q. 23. Where was it situated?
A. It was situated in the old river of 1905, up against the hills, above the Granite Dykes, about a mile. Well, let's see—just about where the bridge crosses the river, now. The river is this way from where it used to be.
Q. 24. How far?
A. Well, I would say it must be a mile.
Q. 25. From where you used to go there to fish?
A. Yes, sir. It cut out, there, in 1905, and come clear over to the Santa Fe Railroad track, in 1905.
Q. 26. Did you know a slough, in about 1905, southwest of White's Spur?
A. Yes, sir.
[fol. 180] Q. 27. Will you describe that slough?

A. Yes, sir. I have been there many a time. White's Spur would be up here, and that slough goes down on an angle, about like that (indicating on map).

Q. 28. The Referee cannot get that in his notes, Mr. Jones. Just give the distances, please.

A. Well, I would say that slough was about six hundred yards from the Santa Fe Railroad track, in what was the old bed. It was a river there, before I came here; and the river changed and went across to the sand hills. I have been told that the river changed in there, in 1856, and went to the sand hills.

Q. 29. When did you first know that slough south of White's Spur?

A. In 1882, when I first went up there to hunt. I never went further than that to shoot ducks. There were plenty of ducks there in that time.

Q. 30. How wide was that slough?

A. I should say from fifty feet to a hundred yards, in some places; and all the way from knee deep to waist deep.

Q. 31. What kind of water was in it?

A. Well, a kind of clear water, you might say—just seepage, from irrigation or from the river.

Q. 32. Underground seepage?

A. Yes, sir, underground seepage.

Q. 33. That is, it was stored water.

A. Yes, sir.

Q. 34. What became of that slough, after 1905?

A. Well, in 1905 the river come across at Canutillo, and came [fol. 181] right on down the road, and the river came into that place; and it stayed there until, I think—until the Santa Fe road, in 1905, threw out a dyke, between Canutillo and Montoya; and that changed the course, to where the river now is.

Q. 35. Do you know how long this river remained east of the Country Club—where the Country Club is now?

A. I don't think over a year. I think it came in there in about May or June, 1905.

A. 36. That was the first time it came in there?

A. Yes, sir. It come back into the old river bed. You can see it there yet, where the old river was.

Q. 37. Mr. Jones, going along in there, without any help, would you have any trouble in locating that slough?

A. No, sir.

Q. 38. Would you have any trouble in locating White's Spur, and the old brick yard?

A. No, sir.

Q. 39. Would you have any trouble in locating that dyke there?

A. No, sir.

Q. 40. Do you know when that dyke was built in there?

A. I think in 1903. 1903 or 1904. Miller and White had a brick kiln there, and were burning brick there, and running a brick yard.

Q. 41. Was there any change in the river, in 1904?

A. Yes, sir; the river changed at one or two places, at or near Anthony—above Vinton, in 1904.

Q. 42. The flood waters came every year, did they not?

A. Well, I can't say they came every year. They came every year, more or less. Every spring, from 1889. But, from 1889 or [fol. 182] 1900, the river was dry more than it was with water.

Q. 43. Now, that dyke there was protecting a little farm that was there, was it not?

A. It was protecting a farm that was known as White's farm. Mr. White had a farm there; and it went in, near the railroad; and he had a brick yard there on the east end of it.

Q. 44. And that dyke was keeping the water off that farm?

A. Yes, sir.

Q. 45. Did you know an old pump station there?

A. Yes, sir, there was a pumping station there. The pumping station now is pretty near where the Country Club is now.

Q. 46. Have you seen that pumping station in the last several years?

A. Yes, sir; I seen it a year ago, or more; and then, again about a month ago. I was merely passing in an automobile and I did not stop. I was not walking, like I have been. I would to do my hunting, years ago—I would go up in the hack that they were running then—that was before the street cars were going up there, and I would get off up there by Courchesne's and walk up and hunt back.

Q. 47. In the years before the year 1905, was there a slough east of the Country Club?

A. Yes, sir, there was a slough there, on both sides of the railroad. There was old river beds. And, water would come in there from the mountains, sometimes, and sometimes would last all winter.

Q. 48. This slough that you knew in there, where was it with reference to the present Country Club?

[fol. 183] A. The slough where I hunted at, and that we used to fish in, in there, a good deal, was southeast of the Country Club.

Q. 49. How far away from the Country Club was it?

A. I think it would be nearly a matter of three-quarters of a mile, or something like that.

Q. 50. That was the first slough down this way?

A. That was the first slough down this way.

Q. 51. Where was the next slough north of that?

A. The next slough north of that came right near the railroad track, above White's Spur.

Q. 52. That was about five hundred or six hundred yards, was it, then?

A. Yes, sir.

Q. 53. Where was that slough, with reference to the Country Club?

A. Almost due east of the Country Club.

Q. 54. About how far away would you say that was?

A. I would say it would be about two miles.

Q. 55. About two miles?

A. I might be mistaken in the exact length of a mile, but, you know, when a person walks it, that may make a difference.

Q. 56. How far is that, today, from the railroad track to the Country Club? How far is it?

A. On an air line, I think it would be about a mile and a half.

Q. 57. Well, now, did you see any evidences of a slough, near that Country Club, when you were up there a short time ago?

A. Yes, sir, there are evidences of an old slough there. But it [fol. 184] has been turned out, and the drainage ditch goes right through the canal there now.

Q. 58. How far is that drainage canal from the Country Club?

A. I don't think it is more than a hundred yards.

Q. 59. Did you ever fish in that slough there?

A. Yes, sir; I fished in there; but I never had any luck in there.

Q. 60. How wide is that slough that is right near the Country Club?

A. Well, it varied. Sometimes, when the river went down, it went down; and when the river went up, maybe it would be a hundred yards wide; and other times maybe it would not be over fifty feet wide. Of course, in the Fall of the year, when we had not had any rains, why, the water in the Slough went down.

Q. 61. Was there any road, from the railroad—any point on the railroad, to the west points of the valley, before the river changed?

A. Yes, sir. The road crossed the river from it, and went right on this side of it; and there was a ford up above the Bell swimming pool, now. There was a ford there, and that road come right on down past the Country Club.

Q. 62. How near to where the Country Club now is, did that road come?

A. That road passed within fifty yards, in some places, right in there. It wound through the woods, in there, you know. That was all woods, in there, then. You know how a road goes through a woods. They turn to miss a tree, and then turn again to miss another tree.

[fol. 185] Q. 63. Yes. What kind of trees were in there where that timber was?

A. Cottonwoods and willows. Mostly cottonwoods.

Q. 64. How thick was that timber in there?

A. That was very thick timber in there.

Q. 65. Are you sure that there was timber in there, where the Country Club now is?

A. Yes, sir; lots and lots of timber right in there where the Country Club now is.

Q. 66. Where did it go to?

A. It went west, to the river.

Q. 67. West, or southwest?

A. You might say southwest of it. It would go west of it, mostly. After you got from that woods, there was mostly mesquite and tornillo out there.

Q. 68. With reference to the road that goes by the Country Club and the Bell Pool, how did it go?

A. It went pretty near the same way, to just about up above where the Bell Pool is, where there was an old ford there.

Q. 69. You would go above the Bell Pool to the Canutillo crossing?

A. Yes, sir.

Q. 70. Then, where would you go?

A. Then we would cross, and go over towards La Union.

Q. 71. What would you go over there for?

A. We would go over there hunting. There was quail over there—good quail hunting over there. And there was ducks over there. I would go over there, in the hunting season, to hunt ducks.

Q. 72. Where was the river of 1903?

[fol. 186] A. Right up against the sand hills.

Q. 73. Where was the river running in 1904?

A. Up against the sandhills.

Q. 74. Where was the river running in 1905?

A. In 1905, it broke over, about Canutillo, and run down right along by the Santa Fe Railroad until it got close to White's Spur, and then it went over there to the west. You can see, there, now, where it was.

Q. 75. How near was it to the railroad, when it came down, in 1905?

A. Oh, I should say about a mile.

Q. 76. That was the farthest east that it ever got?

A. Yes, sir. And then it thrashed back for the Santa Fe about in there where that dyke is, there. In 1905, they went to work there, and worked there for about five months with a construction train, there, and turned it back into the bed that it now holds; and it has held that bed since 1905.

Q. 77. That is, it has held it after 1905?

A. Yes, sir.

Q. 78. There was no water in that river, after 1905?

A. No, sir. It went over towards the sand hills. But it kept that main line coming down.

Q. 79. Are you able to identify the present Country Club site, in connection with something that you knew on those hunting trips?

A. Well, yes, because there was that pump house there, and we would go there to get water, because we could get better water there, for drinking. And I knew it by the old slough, that turned—that [fol. 187] used to be a blind that I used for duck hunting.

Q. 80. Did you ever camp out near the present Country Club site?

A. Yes, sir.

Q. 81. How many times?

A. I don't know how many times, but we used to go there often. We used to take our camping outfit, and our Brunswick saddles and take some beer along, and have a good time. And we would go up Saturday night, and come back Sunday night.

Q. 82. Would you camp in groves of trees, or out on the open prairie?

A. We would camp in the grooves of trees, to have the shade.

Q. 83. How large were those trees?

A. All the way from a foot and a half in diameter, up. There would be some up to two and a half feet in diameter I should say.

Q. 84. Are you certain as to the location?

A. Yes, sir, pretty near.

Q. 85. It was south of the old road that you travelled to go to the west?

A. Yes, sir.

Q. 86. And that old road, except that it winds about, is about where this new graded road is?

A. Yes, sir.

Q. 87. And that forest extended back to where the Country Club now is?

A. Yes, sir. The river came over to where it now is, in 1905.

Q. 88. How is that?

A. The river came over in 1905, to where it is. It first came to [fol. 188] the Santa Fe track, in the summer; and in the summer of 1905, the railroad company threw in that dyke and then the river went west from there.

Q. 89. Prior to 1905 there was no running river anywhere east of the present Country Club site?

A. No, sir; it ran right up against what we call the sand hills.

Q. 90. That is, on the west side of the valley?

A. On the west side of the valley, yes, sir.

Q. 91. You were there, all the years that you have mentioned?

A. Yes, sir.

Q. 92. Frequently during all the years that you have mentioned?

A. Yes, sir.

Mr. Turney: That is all.

Cross-examination:

By Thornton Hardie, Esq.:

Q. 93. You stated, I believe, Mr. Jones, that you would go up the river, as far as these granite rocks that extend up there near the river bank?

A. Yes, sir.

Q. 94. Did you go north of that?

A. Not fishing. When we got over in there, we went over into what was known as the Canutillo slough. The river ran between that—between Vinton and Cantillo.

Q. 95. Then, you did not follow the river north of the standing rocks?

A. Not fishing. I followed it up in hunting quail—followed along the trail.

Q. 96. You followed along the trail?

A. I followed along the trail; but I followed it along the river [fol. 189] there.

Q. 97. I mean, you did not go along the river bank?

A. It would depend on what I was looking for. Sometimes I walked up the river bank and sometimes I did not.

Q. 98. Did you ever walk up the river, from standing rocks?

A. Yes, sir, I walked up the river as far as La Union, several times.

A. 99. That was eight or nine miles?

A. It was further than that.

Q. 100. Perhaps as much as fifteen miles?

A. Yes. A great many times I have walked as much as fifteen miles. A good many times I would go up as far as Vinton—walk up, hunting, and then take the train back. Take the Santa Fe-Silver City train back to El Paso.

Q. 101. Now you know where Mr. L. M. Crawford's house is, up there?

A. Yes, sir.

Q. 102. You know where Mr. Trousdale lives?

A. Yes, sir.

Q. 103. You know where the southwest corner of the Canutillo Grant is?

A. I don't know that exactly, but I think I know where it is.

Q. 104. Well, you know where Mr. Trousdale lives?

A. Yes, sir.

Q. 105 And Harper's Lake?

A. Yes, sir.

Q. 106. Now, this Harper's Lake that you speak of, was in the river of 1905?

A. Yes, sir.

[fol. 190] Q. 107. And after it moved back, in 1905, the water was in there, and it was Harper's Lake?

A. Yes, sir, that was Harper's Lake.

Q. 108. Now, this Harper's Lake was not over a mile from Mr. Trousdale's house?

A. I don't think it was. Very near that.

Q. 109. Did you notice Mr. Trousdale's fence, along his cultivated lands there?

A. Why, I have seen it there. I remember some trouble that he had, getting in his irrigation system there, and it washing out all the time.

Q. 110. From Harper's Lake, you could see Trousdale's place, could you not—his cultivated lands?

A. No, you could not see it on account of the trees. There were lots of trees around Harper's Lake at that time, and you could not see Trousdale's place on account of the trees.

Q. 111. Well, it wasn't much over a mile away?

A. I would not say it was much over a mile.

Q. 112. Now, there was a long stretch of sand going west from there,—from Harper's Lake, wasn't there?

A. No, sir; mostly you would come down in the bottom, there—come down right on the flat there.

Q. 113. A long sandy flat there?

A. No, not sandy, but a long flat that was adobe.

Q. 114. You have been up there lately, haven't you?

A. I haven't been up there since 1915.

Q. 115. It may have blown in there, since you were up there?

A. Well, I don't know when it made the change. When you leave the granite dyke, there, after leaving that for three quarters [fol. 191] of a mile, you strike a very sandy road, and come on down into the flat; and, if it has been raining, or is wet there, you cannot get through on account of the bogging.

Q. 116. How long has it been since you have been to Harper's Lake—1915, I believe you said?

A. I think about 1915.

Q. 117. Mr. Trousdale would know where Harper's Lake was, wouldn't he?

A. I think that he would.

Q. 118. He was farming right around there?

A. I think so.

Q. 119. He was controlling the land around there?

A. I don't know. I don't know about his controlling any land in there. He might have controlled what he had fenced, and he may have controlled all of that land up there, for all I know. I don't know anything about what he controlled.

Q. 120. You did not go over to see Harper's Lake, on this recent trip?

A. No, I did not go right over there to it.

Q. 121. That place that you call Harper's Lake,—that was not a lake at all, until after 1905, because the river was in there. Is that right?

A. I think so.

Q. 122. Now, that was just a short distance south of the Canutillo Grant, wasn't it? Not very far south of the Canutillo Grant, there?

A. Oh, I think it is quite a distance south of the Canutillo Grant, and it comes in the Montoya Grant, in there that Magoffin and Mills threw out.

[fol. 192] Q. 123. Well, since 1915, you have not been up in that country, there, very much? Have you?

A. No, sir.

Q. 124. And when were you there last?

A. The last time I was there, was about the middle of May, I think.

Q. 125. You went up there with Mr. Longuemare?

A. Yes, sir.

Q. 126. Mr. Longuemare is helping to take witnesses out there, is he not?

A. I expect he is.

Q. 127. Mr. Z. T. White, you have known for a long time?

A. Yes, sir; since 1881, I have known Mr. White.

Q. 128. Mr. White is in this room now, is he not?

A. Yes, sir.

Q. 129. He is in his right mind, and capable of testifying, is he not?

A. Well, I think he is. I have not heard anything to the contrary. I do not think he plays golf, so I think he is all right.

Q. 130. So you think he still has his wits about him?

A. I think so.

Q. 131. He is well capable of testifying, you think?

A. Yes, I should think so; and, if you want to know it, I will say that I would believe anything that he said. I have known Mr. White for a great many years. I would think that anything that he would testify would be all right.

Q. 132. He has always been a good friend of yours?

A. Yes, sir.

Q. 133. And you haven't seen anything about him to indicate that he could not take the stand and talk pretty well and give his tes-
[fol. 193] timony in this case?

A. Not that I know of; no, sir.

Q. 134. Now, as to this river of 1903—before you got to the land now occupied by the Country Club, would you have to cross the river of 1903?

A. No, sir.

Q. 135. Then, if that hiver of 1903 was in such a position that you would have had to cross it to get to the Country Club, your idea about where the Country Club is now would be different than what it is in your testimony?

A. No, I don't think so.

Q. 136. Well you would know that you would not have to cross the river in 1903 to get to the place where the Country Club now is, wouldn't you?

A. Make yourself a little plainer, now, Mr. Hardie, I am a little deaf.

Q. 137. Now, let's see: According to your statement, in 1903, you would not have had to cross the river to get to the land that is now occupied by the Country Club, would you?

A. No, sir.

Q. 138. Then, if it should develop to be a fact that the river, in 1903, was running around to the east of where the Country Club now is, then you would figure out that there must have been some change up there, and that you might be mistaken about where the places you have been talking about, that you knew in the earlier days, are?

A. I might change that, but I know where the Country Club is, and I know where the river was running, and I could figure out the things I located.

Q. 139. You have not been up in that country, much, since the
[fol. 194] year 1915, until recently?

A. Oh, I was up there last Spring, fishing; and I caught some sun perch, and I tried to get some fish in the drainage canal, but I did not catch any, and I did not go up there any more.

Q. 140. When was that?

A. About a year ago last April.

Q. 141. Where was it that you went to?

A. I fished right along in there by the bridge, there, in the drainage canal.

Q. 142. In which drainage canal?

A. That drainage canal that runs right past the Country Club.

Q. 143. Now, that was about a year and a half ago?

A. Yes, sir.

Q. 144. At that time you were not thinking anything about boundary suits, or about testifying in any case, were you?

A. No, sir.

Q. 145. And how long before that occasion was it, that you had been up there?

A. I could not remember just when.

Q. 146. But you had not been up in there, much, since the year 1915?

A. No, I had not been up in there, much; but I don't remember just when. I might have been up in an automobile, and passed by, a number of times.

Q. 147. Well, the whole face of the country up there has changed since 1915, hasn't it?

A. Not so much changed. There is some more cultivation.

Q. 148. The trees have been cut down, and roads have been built in there?

[fol. 195] A. Yes, sir, the trees have been cut down, and are gone; but the same landmarks were there.

Q. 149. What landmarks were there?

A. Well, Ben Dowell's place was there.

Q. 150. Where was Ben Dowell's place?

A. Why, that land right there where the Country Club is now.

Q. 151. What landmarks were there on the Ben Dowell place, that you recognized?

A. Why, we came in there, right where the Santa Fe Railroad turns around, in there where old man Teel owned a piece of land, which George Zimpleman bought from him; and then Ben Dowell owned land in there, above there. That was what I was told, a dozen times; but, as going down to the Court House, to see if it was right or not, and if he owned it, why I didn't go, because I didn't want any of it.

Q. 152. Now, Mr. Jones, you say the river was running against the sand hills, above the standing rocks?

A. Yes, sir.

Q. 153. And it ran up there, to about where Harper's Lake was?

A. No, it makes a big bend, right there where the rocks are; and there seems to be just a driveway between the rocks and the river bed; and then she shot to the north, and then she came back to the west, again.

Q. 154. To the sand hills?

A. Yes, sir.

Q. 155. And then, how far did it run, against the sand hills?

A. All the way to la Union—about sixteen miles.

Q. 156. Right against the sand hills?

A. Yes, sir.

[fol. 196] Q. 157. All the way?

A. Yes, sir.

Q. 158. And did not get out over a hundred yards from the sand hills?

A. No, sir; I don't think so. I know you could not go and drive in there, without going up on the sand hills.

Q. 159. Now, Mr. Jones, this map here is plaintiff's exhibit No. 21. It is a tracing of a map on file in the office of the United States Reclamation Service, made by J. A. French, engineer. This is a tracing made by Mr. Post. The original map was made in 1903, by Mr. French. Now, this map shows the Rio Grande of 1903, marked here (indicating on the map). Now, on this map here, there is a place here called "Tap Rock." It is across the valley, west of the place called "Gravel Pit." You see, on the east side of the valley, here, "Gravel Pit," and across there is "Tap Rock." (Indicating on the map.) Is that the place you are talking about as "Standing Rocks?"

A. No, sir. The place I am talking about is above the Country Club and the granite dykes—in a position a little above the Country Club.

Q. 160. Don't you know, Mr. Jones, that Piedras Paradas is right here, where it is called "Tap Rock" on this map?

A. I don't know what's called "Tap Rock." I know there is a trail over there, and these rocks come right down there from Monument 1.

Q. 161. Now, these granite rocks that you speak of—are they not standing perpendicular—sticking up out of the ground?

A. They stand up perpendicular, right out of the ground.

[fol. 197] Q. 162. And they are very thin, aren't they?

A. No, sir; they are very thick. I suppose there is twenty feet across them, and they stick out right towards the Southern Pacific Railroad; and you can find traces of them, over there, for miles.

Q. 163. I am talking about the rocks right near the river, Mr. Jones.

A. That rock has nothing to do with the Country Club.

Q. 164. Well, you know those rocks that come down right near the river?

A. Yes, I know about them rocks.

Q. 165. Well, those rocks that I am asking about, now, did not the river come out right near those rocks, in 1903?

A. It come right down below the Country Club, toward the railroad, and kept turning in there.

Q. 166. Do you know where the Boy Scout Camp is up there?

A. I know about where it is. I could go right to it.

Q. 167. Have you ever been there?

A. I hav-n't been there. I helped tear it down before it was moved up there, and I happened to be going along by, when they were moving it up there.

Q. 168. Don't you know that the river comes out into the valley and makes a big turn right there?

A. There is a bend in the river there.

Q. 169. And there is a big sand bar right in there?

A. No, I don't remember that sand bar, at all.

Q. 170. You did not look at it very carefully?

A. Well, no. It might be right, but sometimes it ain't. But I might go there, and look it over, and it might be changed. I can go up there and make a survey for you, if you want me to.

[fol. 198] Q. 171. Have you done anything of that kind lately?

A. Not lately; but if you have got some money, and want to pay me for it, I might do it for you.

Q. 172. Now, you see, here on this map, is "Boundary Line?"

A. Yes, sir.

Q. 173. And you see "Gravel Pit?"

A. Yes, sir.

Q. 174. And you see "Montoya?"

A. Yes, sir.

Q. 175. And you see "White's Spur?"

A. Yes, sir.

Q. 176. Now, you see that point?

A. Yes, sir.

Q. 177. You remember that point?

A. I can't remember every point, there are so many of them.

Q. 178. Do you know the south end of the Santa Teresa Grant?

A. No, sir; I never surveyed it. I didn't never want any of that land up there.

Q. 179. Well, do you remember these points represented here (indicating on the map)?

A. Well, it might have been there, but if so, I don't—Right in here where Graham's place was?

Q. 180. You say you moved that Boy Scout Camp there?

A. No, I didn't mean to say that. I meant to say that when they were moving it up there, I was happening along.

Q. 181. Have you been up there since that building has been put there?

A. No, I have never been right there.

Q. 182. Now, you see this map shows that 1903 river going back to the foothills at this place?

A. Yes, sir.

[fol. 199] Q. 183. And then out into the valley?

A. Yes, sir.

Q. 184. Now, here it shows "Old Border." "White Spur."

A. Yes, sir.

Q. 185. And it shows the river running out into the valley right at this point.

A. It might have been there along in the early days, but not since I have been here.

Q. 186. Well, this map—the original of this map, was made in 1903.

A. Well, you know, lots of people make mistakes, and lots of people make terrible mistakes, and he has made a terrible one on that line.

Q. 187. Well, if the river was running like it is shown here, at the time that Mr. French made this map——

A. Well, that river wasn't running there. The river was right up against the foothills.

Q. 188. Well, let's suppose that the river was running as represented on this map at that time——

A. I am just telling you right now that according to my recollection, I never seen that river run right there, and I know what I am talking about. And I could give you a piece of advice——

Q. 189. Don't give us any advice, Mr. Jones.

A. Well, I say it wasn't there.

Q. 190. Well, just take it for granted, and let us suppose it was there.

A. Well, I am not going to suppose. I am not like the nigger. The nigger said he owned a farm and somebody said he didn't and [fol. 200] the fellow said "Well, let's suppose he did" and another nigger said "It ain't no use supposing he did, because if you suppose he did, the white man would take it away from him," so I don't suppose. That map ain't correct.

Q. 191. Just what is your name—the name by which you are usually known here, Mr. Jones?

A. I am Give-a-damn-Jones, a name I am very proud of, too. Maybe you don't know it, but I am.

Q. 192. Now, Mr. Jones, you say this map incorrectly shows the location of the river of 1903, up here by White's Spur?

A. I say this: To the best of my recollection, that bend never came in that river there, at all.

Q. 193. The river never had a bend in there?

A. That is my impression of it, and I walked it, up there, many a day. And I can go up there and show you the marks of it, too.

Q. 194. You might be willing to go up there and show us that?

A. Yes, I will go up there with you if you want, and show it to you—if you will pay me for it. And I will make a map. Or you might get the fellow that made that map, or some of these other surveyors. You might get Owen to go up with you, and he will make a map for both sides, or for anybody, and make it just as they tell him to, and survey your land for you just as you want it.

Q. 195. That is what he says he did for Texas?

Hon. W. W. Turney: Did he say that?

Thornton Hardie, Esq.: According to the testimony in this case.

Hon. W. W. Turney: Did he say he made any kind of a map that Texas wanted?

[fol. 201] Thornton Hardie, Esq.: No, he did not say that; but he said he had a river of 1905, in there, where there was no river in 1905.

Q. 196. Now, Mr. Jones, look at this map, again,—if it don't hurt you to look at it.

A. All right; it don't hurt me to look at it.

Q. 197. Now, let's do a little more supposing: Suppose Mr. Crawford's house is just here about where this letter "F" is, and the river was running——

A. It was running up against the sand hills, all along up in there,

in 1903. Here is where it should have made the bend, as I was telling you, out there, across there (indicating on the map).

Q. 198. Now, about where did you say the river was running, between the points "F" and "G," on this map?

A. Why, I wouldn't say. It was running everywhere, right along these places—right along the sand hills—what you call the bluffs.

Q. 199. Well, in 1903, you say the river was running along the foothills between the points "F" and "G," on this map?

A. Yes, sir.

Q. 200. Is that your recollection of the location of the river of that year?

A. Yes, sir.

Q. 201. And that, in 1905, it changed out of that course and came over to the east?

A. Yes, sir.

Q. 202. But, in 1903, and prior to that time, it was running between the points "F" and "G," as shown on this map, right near to the foothills?

[fol. 202] A. Yes, sir; as near as I can recall it. It came out in little bends, though, but not in no big bends like that. In little bends like this (indicating on the map.)

Q. 203. Well, where you say "little bends like this," you are referring to where I have marked on this map, from "H" to "I"?

A. I don't wish you to make any marks for me. I am trying to tell you where the river is. And, as far as your marks are concerned, it don't make a bit of difference to me where you mark them, Mr. Hardie.

Q. 204. Well, you put the marks on there.

A. No, I ain't making no marks.

Q. 205. How about the bend, from "H" to "I"?

A. I wasn't figuring them bends up for a map.

Q. 206. What do you say about it, from "H" to "I"? How about those bends in there?

A. From "H" to "I"? There might have been bends, but no big bends in there. There wasn't no big bends in the river, in there, at all.

Q. 207. Well, what do you say about the distance from "H" to "I"?

A. Well, I don't think there was any bend in there. Maybe just a little bend in there. But I know one thing, this (indicating on the map) wasn't there.

Q. 208. Well, but I am asking from the point "H" to the point "I."

A. Well, I think you have got them bigger than they ought to be. There may have been some little bends in there, but no big bends like that in there.

Q. 209. Then, you say that these bends in the river, represented [fol. 203] here on this map between the points "H" and "I," are too big? And that the map is incorrect?

A. Yes, the map is incorrect; and they are all too big.

Q. 210. Your idea is, that, from the point "H" to "I," the river ran practically against the foothills?

A. Yes, it ran just along about like this (indicating on the map). There was no bigger bend than that bend there, in any of it, in there (indicating on the map).

Q. 211. Then it ran right along easterly, along one of these lines here (indicating on the map) is that right?

A. I think so.

Q. 212. Then, from "H" to "G," your idea is that it ran along this furthest east line—this furthest east contour line (indicating on the map).

A. I know all the bends in that river, along there where the sand banks are. It made a lot of little bends, but there was no big bends in that river in there.

Q. 213. Then—I want to see if I get you right, Mr. Jones, or not—from the letter "H" to the letter "G," it is your idea that from 1903 to 1905, the river was running just about the last of these contour lines, shown on this map (indicating on the map), is that right?

A. I don't know by that map. I can go up there and show you, and tell you how many feet I could step in a day, and how far I could walk. And I know there was no such bends in there, in that river, as are shown on that map.

Q. 214. You know where the river is now?

A. It may be out there now, because the river isn't there (indicating on the map).

[fol. 204] Q. 215. Now, do you know whose place that is, there, (indicating on the map), now?

A. No, I don't know whose place that is now. I remember that big bend going by La Union.

Q. 216. Do you know where La Union is? Show me on this map where it is?

A. Right along in here (indicating on the map).

Q. 217. That point marked "Sand Point" on the map, is that about where La Union is?

A. I think so.

Q. 218. Well, Mr. Jones, you are mistaken. La Union is right up here (indicating on the map)—away above that point where you locate it.

A. Well, I tell you I am not making no marks on that map. I don't know the scale of that map.

Q. 219. Well, I don't know what the scale is, either. But you said that your idea of where La Union was, was right in about here where "Sand Point" is on this map.

A. Well, I said I couldn't tell you where the bends in the river was, and no other man could do it either, but the man that made that map. And the man that made that map didn't know where the bends in the river was.

Q. 220. You never did make a map, showing all the bends of the river? Now, Mr. Jones, between the point "G" and the point "F," did you ever make any maps of the river over there?

A. No, sir; I told you I never made any maps. But I tell you I could make a map of the river, if you want one.

Q. 221. But you never did make any maps of it?

[fol. 205] A. No, sir.

Q. 222. Now, at the times you were up there, in the earlier days, it was all grown up in trees and brush?

A. On this side, all trees and brush (indicating on the map, towards the east side of the valley), and, on this side, mesquite and tornillo—on the west side.

Q. 223. Mesquite and tornillo on the west side, in the valley?

A. In the valley, it was all trees and mesquite and tornillo—cottonwood and willows. Most of the trees on the east side.

Q. 224. Was there any cultivation, up there, then, to amount to anything?

A. Not very much. Mr. White had some alfalfa in there, and some cultivation; and I noticed his old hay shed is standing there now.

Q. 225. What is your business, Mr. Jones?

A. Carpenter.

Q. 226. Have you ever been a surveyor?

A. Well, I studied that, some, in my youth.

Q. 227. You say where the Country Club now is, there were some trees one foot thick, and some as much as two feet thick?

A. Yes, sir; and I say there was lots of trees there; big fellows.

Q. 228. And, how about west of where the Country Club is now?

A. Yes, sir, right on west, down to the river bed; it was trees all through there—timber there. And they cut timber out of there to burn the brick that was made at the White and Miller brick yard.

Q. 229. Now, in going west from Mr. White's place there, where he had the brick yard—in going west from there you finally struck [fol. 206] the river, did you not?

A. Yes, sir, we struck the river.

Q. 230. And, this land that you speak of, that was grown up in big trees, was between Mr. White's farming land and the river?

A. All through there to the river.

Q. 231. And you are not attempting to talk about any trees west of the river?

A. I told you clean to the river. All through that country, there was trees.

Q. 232. But that was all east of the river?

A. All east of the river. After you crossed the river, you went into the sand hills, and mesquite brush and sage brush, and the river, on the east side of it, was all trees.

Q. 233. When you speak of their cutting timber out up there—that was all east of the river, wasn't it?

A. East of the river, yes. I never seen them cut any on the other side of the river.

Mr. Hardie: That is all.

Redirect examination.

By Honorable W. W. Turney:

Q. 234. Now, that river was the river of 1903, where you placed it?
A. Yes, sir.
Q. 235. And the timber went to the river of 1903?
A. Yes, sir.
Q. 236. Do you know Mr. L. M. Crawford?
A. No, sir. I have heard of him but I do not know the gentleman.
[fol. 207] Q. 237. Do you know what business he is engaged in, in town here?
A. No, sir. I was told that he is in the theatrical business. I was told that he runs the Crawford Theater and leases the Texas Grand Theater. That is only from hearsay. Not from personal knowledge. That is what I heard.

Mr. Turney: That is all.

Recross-examination.

By Thornton Hardie, Esq.:

Q. 238. Have you got that map that Mr. Longuemare had, when he went up there with you, to show you these places?
A. No, sir.
Q. 239. Who has it?
A. I do not know.
Q. 240. How large a map was it?
A. About half as big as that one that you had there.
Q. 241. Did it have the Country Club marked on it?
A. I could not tell you whether it did, or not. If I were to look at it, I could tell you whether it was the same map or not.
Q. 242. Was it a map like this one? Please look at this map over here (indicating a blue print of plaintiff's exhibit No. 280).
A. No, sir, it was not this map.
Q. 243. Was it one like that?
A. No, it was a smaller map.
Q. 244. Was it like that map, but smaller?
A. It was smaller.
[fol. 208] Q. 245. Was it a map like this (showing to the witness plaintiff's map exhibit No. 280)?
A. It was a little map, that I thought he made himself. He did not say that he made it himself, but it did not look like a regular map.
Q. 246. It just looked like a sketch?
A. Yes, sir.
Q. 247. What was he using it for?
A. Well, he was showing me what his idea was as to where the lines and things were.
Q. 248. Was his idea like yours?
A. No. I differed with him. I thought he was not far enough east with it.

Q. 249. Did you finally convince him, or he convince you?

A. No, we didn't discuss it much. We just rode up there, and then came back here. I saw him this morning. I hav-n't seen him since we went up there, before, until this morning.

Mr. Hardie: That is all.

The witness was then excused.

It being now near the hour of noon, a recess was taken, and the further hearing of this cause was continued until 1:30 o'clock in the afternoon.

[fol. 209] And at 1.30 o'clock in the afternoon of said Friday, June 20, 1924, pursuant to recess, the further hearing of this cause was resumed.

The same parties were present as at the forenoon session.

IN SUPREME COURT OF UNITED STATES

ARGUMENT OF COUNSEL

Honorable W. W. Turney: I now announce the closing of the testimony on behalf of the State of Texas.

Honorable Frank W. Clancy: In view of the fact that the State of Texas does not desire to produce further testimony, do you wish to take a little time, to consider matters, Mr. Hardie?

Thornton Hardie, Esq.: I think that we had better offer this map, here, in evidence (referring to the copy of plaintiff's exhibit No. 21), for the reason that it has certain marks upon it, explaining the testimony of the witnesses examined at this session. And, if it is agreeable, we can substitute for the map, photographic copies of the portion of the map upon which the figures are. Unless it is agreed that we can do that, why, then, we will just offer this whole map in evidence. We offer this for the purpose of explaining the [fol. 210] testimony of certain witnesses who have testified at this hearing—with the marks which have been placed on the map at this hearing.

Attorney General Keeling: We desire to object to the introduction of the map, and to the introduction of any photographic copies thereof, on the ground that this map has not been identified, or authenticated, and introduced in accordance with the order of the Supreme Court of the United States, of date April 14, 1924, permitting this hearing; and, further, that the map is not responsive to any issue authorized to be investigated, under that order of the Supreme Court.

Honorable Frank W. Clancy: I do not assume that there will be any objection made to photographic copies of portions of this map.

Honorable W. W. Turney: And we object upon the further ground that there is no evidence in this case that this map is a correct map, or that it represents any correct delineations upon the earth's surface, especially as to river lines and survey lines, or other

objects which might be shown thereon. Neither is there any evidence or testimony in the case, showing when the said map was made, or that the same was made from an actual survey upon the ground. Nor, is there any evidence to establish the actual correctness of said map and plat.

[fol. 211] And defendant makes the further objection that the lettering and marking on said map is no part of the original map introduced at the first hearing of this case by the plaintiff, as it's exhibit No. 21, on February 14, 1914, but is an addition thereto, made by counsel for plaintiff in this case.

Thornton Hardie, Esq.: Then, we will offer the whole map in evidence, and ask that this map be marked as plaintiff's exhibit No. 285.

The map presented by counsel was then marked as plaintiff's exhibit No. 285. This map being 26″ x 56″ in size, is transmitted separately from this transcript. For convenience, there is appended to this transcript, marked "Plaintiff's Exhibit No. 285," a photographic copy of said map, as page 216 of this record.

Thornton Hardie, Esq.: I will state for the record, that the yellow lines on the blue print copy of the map of R. J. Owen, September-October, 1923, referred to by myself in examining the witnesses at this hearing, and by the witnesses, are no a blue print of the map which was placed in evidence by the plaintiff, the State of New Mexico, in its introduction of the testimony of R. J. Owen, at the hearing of this case in the month of May, 1924, which was marked [fol. 212] as plaintiff's exhibit No. 280, in this case. And, the yellow line on the map referred to in the examination of the several witnesses at this session, in June, 1924, is the line of the river of 1905, as shown by the testimony of the witness R. J. Owen, taken in the month of May, 1924.

Thornton Hardie, Esq.: The plaintiff now offers in evidence this tracing cloth map, showing the relative positions of the river of 1905, according to the Reclamation Service map introduced in evidence in this case, and marked "Plaintiff's Exhibit No. 281," at the May session of this hearing, in 1924, and also the 1905 river, according to the survey of R. J. Owen, and according to the field notes in the L. M. Crawford deeds, plaintiff's exhibits Nos. 282 and 283, introduced in evidence at said May, 1924, session. This is merely a mathematical conclusion, and is presented and offered merely for the purpose of assisting in the argument of the case. Its correctness can be determined from the maps and field notes already in evidence in this case.

Attorney General Keeling: The defendant objects to the introduction of this map, on the ground that it is testimony which is not authorized to be introduced, by the order of the Supreme Court of the United States, made on the 14th day of April, 1924, authorizing this hearing. That it is an argumentative map. That it has not [fol. 213] been properly authenticated, and there is no proof in the record that shows that it has been correctly made, and that it

represents true facts, of any period of the history of the river. That it is wholly immaterial and irrelevant, and is an argumentative effort upon the part of counsel to bolster up and support the testimony of witnesses introduced in the case by the State of New Mexico.

Thornton Hardie, Esq.: In view of the objections made by counsel for the State of Texas, we will withdraw the offer of the map last mentioned.

Honorable Frank W. Clancy: I wrote to the Attorney General of Texas, to the effect that we might desire to offer some oral testimony, and he replied that he doubted the advisability of expanding the limits of the order of the Supreme Court for the taking of testimony at this time. It has occurred to me that the interests of the State of Texas might be preserved by counsel for Texas making upon the record such objection as they saw fit to make, and that if we produced such testimony, and the Supreme Court declined to look at it, the defendant would not be harmed.

Attorney General Keeling: I feel that we ought to interpose an objection to the introduction of any further testimony than that [fol. 214] which is directly authorized by the order of the Supreme Court of the United States, of April 14, 1924, under which we have been taking this testimony.

A short informal recess was here taken.

Honorable Frank W. Clancy: After conferring with Mr. Hardie, we have come to the conclusion that the testimony that we had in mind, does not seem to us to be very important. But, I will suggest, that, inasmuch as Mr. Hardie is in charge of the introduction of testimony for New Mexico, at this time, that we might now adjourn, and meet again tomorrow morning.

Attorney General Keeling: If it is possible to do so, I want, very much, to go away tonight, and I would like very much to close the case this afternoon, if it is possible to do so.

After informal discussion between counsel, it was decided that a recess should be taken until three o'clock in the afternoon, which was accordingly done.

And at three o'clock in the afternoon, the same parties present at [fol. 215] the morning session again met; and counsel for the plaintiff announced that he had no further evidence to present.

Counsel for both parties thereupon announced that this case is closed.

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FOLD OUT IS TOO LARGE TO BE FILMED

IN SUPREME COURT OF UNITED STATES

EXAMINER'S CERTIFICATE

THE UNITED STATES OF AMERICA,
The State of Texas,
County of El Paso:

I, William E. Baker, Examiner agreed upon by counsel, in stipulation dated May 5th, 1924, appended as page 2 of this transcript, hereby certify that the foregoing 215 pages contain a full, true, correct and complete transcript and report of the testimony adduced and the proceedings had under and by virtue of the order of the Supreme Court of the United States, made herein, and dated the 14th day of April, 1924, and of the whole thereof.

Dated at El Paso, Texas, this 21st day of June, A. D. 1924.

W. E. Baker, Examiner.

(Here follows Plaintiff's Exhibit No. 285, marked side folio page 216.)